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ARGUMENT OF

HUGH M. DORSEY

Solicitor-General, Atlanta Judicial Circuit

AT THE TRIAL OF

LEO M. FRANK

Charged with the murder of Mary Phagan

Published by

N. CHRISTOPHULOS,

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FOREWORD.

I have obtained the consent of Solicitor-General Hugh M. Dorsey to print his address to the jury in the Frank trial, herewith presented, and through him I obtained a copy of the report of his speech as taken down by a stenographer employed by the defense, this being the only available copy. Mr. Dorsey has read the speech at my request and states that the same is accurate in every respect, in so far as he is able to recall the same.

I am offering this speech to the public with two ideas—first, because I believe that in view of the widespread interest being manifested in this case it will prove a profitable business venture, and, second, because I believe that the public will appreciate the opportunity of reading this remarkable speech exactly as it was delivered.

Solicitor-General Dorsey's address, occupying as it did the greater part of three days' session of the court, and coming at the climax of a hotly-contested 29-day murder trial, has been pronounced one of the most powerful addresses of its kind ever delivered in the state's history.

The following extract from an article in the Atlanta Georgian of August 23, 1913, the second day of Mr. Dorsey's speech, pays glowing tribute:

> "A white-hot phillippic, the masterpiece of his career and one of the greatest ever heard in a criminal court in the South, was hurled by Solicitor Hugh M. Dorsey directly at Leo M. Frank Saturday in the final plea of the State, and held a packed courtroom tense and thrilled as the grim tragedy of Memorial day was unfolded. The solicitor was at the height of his eloquence at 1:30 o'clock when court adjourned until Monday and he had been speaking over six hours. The case will probably go to the jury before Monday noon. The solicitor was cheered as he left the courthouse."

On the day after the close of the address the following appeared in The Constitution, being the introduction of a half-page report of the solicitor's speech:

> "As the big bell in the nearby church tolled the hour of 12 o'clock, Solicitor Dorsey concluded his remarkable plea for the conviction of Leo M. Frank with the dreadful words: Guilty, guilty, guilty!" It was just at this hour nearly four months ago that little Mary Phagan entered the pencil factory to draw her pittance of $1.20. The tolling of the bell and the dread sound of the words cut like a chill to the hearts of many who shivered involuntarily.
>
> "It was the conclusion of the most remarkable speech which has ever been delivered in a Fulton County courthouse—a

speech which will go down in history stamping Hugh Dorsey as one of the greatest prosecuting attorneys of this age."

While the address was yet unfinished the following appeared in The Constitution of August 24th:

"The speech being made by Solicitor Dorsey is the longest in Southern criminal annals. It already has lasted six hours, with prospects for an additional two or three hours more. The longest speech previously was four or five hours. That was in the halcyon days of Charley Hill, who brought tears, smiles and anger whenever he spoke. Some have said that that grand old man never made a better speech than Dorsey's argument. Some say not so. They have not heard Dorsey. Dorsey's speech was a masterly argument, with the stamp of genius in every line, and in expression of esteem, Atlanta—or a part of Atlanta—did something it never did before; cheered a solicitor as he came from the court room."

The reader of the published address should be informed that to fully appreciate the speech he would have to have a full knowledge of all the evidence adduced at the trial, with which the jurymen, for whose benefit the speech was delivered, were familiar. It is also true that to the casual reader some confusion may be caused by the frequent use of the pronoun "you," applied by the speaker sometimes to the defendant, sometimes to his attorneys and sometimes to the jury, each being designated in turn by the Solicitor's gestures. The context, however, when carefully noted, will always show to whom reference is made.

I have had prepared a "Table of Contents," in which the entire three days' address has been analyzed into its divisions and subdivisions, demonstrating the marvelous continuity of thought and tenacity of purpose with which the Solicitor covered the stupendous array of evidence in the case. I have also added an "Index" at the close, which will greatly facilitate the reader's finding the contention of the state with reference to any particular piece of evidence, or any other allusion made during the address. A survey of this "Index" will show the wide range of knowledge displayed by the Solicitor.

I have also had prepared an introduction, giving the "Facts of the Crime," and a "Chronological History of the Case," which will be helpful to the reader in keeping the essential facts in mind.

Parties desiring copies of the speech may address me at 411 Third St., Macon, Ga., or care the printers—Johnson-Dallis Co., 136 Marietta St., Atlanta, Ga.

N. CHRISTOPHULOS.

Macon, Ga., April 20, 1914.

FACTS OF CRIME.

On Saturday, April 26, 1913, Mary Phagan, a fourteen-year-old operative in the employ of the National Pencil Company, in Atlanta, Ga., left home at a little after 11 o'clock, going to the pencil factory to get her pay. She had not worked at the plant since the Monday previous, owing to the fact that they had no metal for use in her branch of the work. It is admitted that Leo M. Frank, the superintendent of the pencil factory, was the last person ever positively known to have seen her alive.

At about 3 o'clock Sunday morning, April 27th, her dead body was discovered in the rear of the basement in the building occupied by the National Pencil Company by the night watchman, Newt Lee. She had a cord drawn tightly around her neck, and according to the contention of the State had been dead from 16 to 20 hours or more at the time her body was discovered.

The little girl's underclothing was torn in several places, and the crime was pronounced by physicians as well as police officers as unquestionably the work of a pervert. It is generally conceded that Mary Phagan was an unusually pretty and attractive child.

Newt Lee, the night watchman, was immediately held by the police, and several other suspects were arrested during the next two days, the climax coming on Tuesday, April 29th, when Leo M. Frank was detained at police headquarters by the authorities, he having been under suspicion since immediately after the crime was discovered.

CHRONOLOGICAL HISTORY OF CASE

(Covering period of one year after crime.)

April 26, 1914—(Memorial day)—Mary Phagan murdered.

April 29—Leo M. Frank, superintendent of pencil factory, detained at police station to await action by coroner's jury.

April 30—Coroner's jury begins long session, lasting over a week. Newt Lee and Frank both make statements.

May 1—Jim Conley, negro sweeper, arrested. Considered unimportant.

May 8—Coroner's jury orders Frank and Newt Lee held for grand jury action.

May 24—Frank indicted by grand jury for murder; Lee held as material witness.

July 28—Trial of Frank commences before Judge L. S. Roan, Judge of Stone Mountain Circuit, Superior Court. Following jury empaneled: F. E. Winburn, foreman; M. L. Woodward, D. Townsend, A. L. Wisbey, W. M. Jeffries, M. Johenning, J. T. Ozburn, F. V. L. Smith, A. H. Henslee, W. F. Medcalf, C. J. Bosshart, and J. F. Higdon.

July 29—Examination of witnesses begins; over two hundred witnesses called before trial is completed.

August 20—Evidence completed; argument of counsel begins; Reuben R. Arnold and Luther Z. Rosser speak for defense. Frank A. Hooper follows, assisting in prosecution.

August 22—Solicitor-General Dorsey begins closing address, extending over three days.

August 25—Case goes to jury and verdict of guilty is returned.

August 26—Frank sentenced to death on October 10, 1913; attorneys move for new trial.

October 31—Judge L. S. Roan denies motion for new trial; case appealed to Supreme Court of Georgia.

February 17, 1914—Supreme Court of Georgia affirms verdict of lower court, by vote of four to two. Motion for rehearing is made by attorneys for Frank.

February 25—Supreme Court unanimously overrules motion for rehearing.

March 7—Frank sentenced second time; April 17th set for date of execution.

April 16—Attorneys Rosser and Arnold file extraordinary motion for new trial on ground of newly-discovered evidence. Sentence again stayed.

April 16—New attorneys for Frank file motion to set aside verdict on constitutional grounds, declaring original counsel acted without authority in waiving Frank's presence at rendering of verdict.

April 22—Hearing of extraordinary motion begins before Judge B. H. Hill, former chief justice of Court of Appeals, recently appointed to new judgeship of Fulton Superior Court.

(Atlanta Constitution, Aug. 27, 1913)

HUGH DORSEY'S GREAT SPEECH FEATURE OF THE FRANK TRIAL

By Sidney Ormond

The Frank trial a matter of history, Solicitor Hugh Dorsey and his wonderful speech, which brought the case to a close, form the subject matter for countless discussions among all classes or folk in all sorts of places—on the street corners, in clubs, newspaper offices, at the courthouse and wherever two lawyers chance to get together for an exchange of words.

Beyond all doubt, Hugh Dorsey is the most talked-of man in the state of Georgia today. The widespread interest in the Frank case caused all eyes from Rabun Gap to Tybee Light to be centered on this young man, who, up to a few months ago, was little heard of outside of the county of Fulton.

The Frank case has been to Atlanta and the state—in fact, several adjacent states—what the Becker case was to New York and the country-at-large.

Made Thorough Probe.

When Rosenthal was killed by a gang of gunmen at the Hotel Metropole, District Attorney Whitman was unheard of outside of New York. Today he is a national figure. The same thing holds true of Hugh Dorsey in a lesser degree.

Incidentally, there is another point of comparison. When Rosenthal was murdered, Whitman plunged into the case and personally directed the investigation which led up to the arrest and subsequent conviction of the murderers. No one criticised him for his activity in the case. Hugh Dorsey did the same thing. The Frank case was one of far too much importance to be bungled. It was worthy of the best efforts of every court official sworn to uphold the enforcement of the law. The city was in a state of mental stress. Lines were closely drawn. It was no time for mistakes of judgment. Dorsey knew this. He felt the responsibility of his position and he entered into the work of clearing up the awful mystery with but one end in view—that justice should prevail. Unlike Whitman, he met criticism in some quarters—a criticism which was unmerited. He did what he felt to be his duty, that and nothing more; and it is certain that, had he felt Frank innocent, he never would have sought his indictment by the grand jury.

During the progress of the Frank trial a close friend of the unfortunate young man said, in a tone that expressed some surprise:

"I actually believe Hugh Dorsey thinks Frank guilty."

Thought Him Guilty.

And he was right. Anyone who knows Hugh Dorsey has never for one instant doubted that all along he has been firmly convinced of Frank's guilt. Hugh Dorsey is no head-hunter—no savage thirsting for the blood of innocent men. He is human, with human sympathies—tender as a woman at times, but stern as a Spartan when duty calls.

It was the call of duty that caused

him to probe the murder of little Mary Phagan; it was the same call which caused him to prosecute the man he thought guilty of the murder.

Don't think for one instant that Hugh Dorsey did not suffer during the progress of the trial. He suffered as seldom a man is called upon to suffer. It is hard enough to call upon a jury to convict a man of murder; it is doubly hard to do so in the presence of the man's wife and mother. During the last half hour of his speech it was nothing short of torture for him to face these faithful, devoted women and ask that the law which condemns men to death be invoked.

When he said afterward that he felt for the wife and mother he meant every word. He is not a man given to the parade of emotion—men who feel deeply seldom are.

But back to the trial of the case. If it is given to one to view the case without prejudice—and there are many such in Atlanta—the heroic task which Hugh Dorsey had before him is apparent.

First, Luther Rosser was employed. Then Rube Arnold entered the lists for the defense. No more formidable array of legal counsel could have been found in the south. Extremes in method, manner and temperament, equally well versed in the law and experienced in its practice, they formed a bulwark that few men would care to attack.

The knowing ones said:

"Well, Hugh Dorsey will get his. They'll chew him up and spit him out!"

Did they? Not so you could notice it. For once Luther Rosser met his match. For once Rube Arnold crossed swords with a man who caused him to break ground.

Fought Them Every Step.

They tried all sorts of tactics. They used sarcasm; they interrupted, they hammered and they hauled, but it was to no purpose. Dorsey met them at every turn, countering here, slamming heads there. He fought them any fashion they pleased to try.

But his speech was the thing that proved him master. It was a masterpiece. No such speech has ever been heard in the Fulton county courthouse, and the words are measured as they are written. It was, as Burton Smith expressed it, worthy of Bob Toombs in the first-flush of vigorous manhood. It was clean-cut, convincing, forceful. It carried conviction with every sentence. It proved, if proof were needed, that Hugh Dorsey is a lawyer of whom any man need have fear. The speech will live long in the memory of those who heard it, no matter what opinion may be entertained of the guilt or innocence of Leo M. Frank.

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ARGUMENT OF HUGH M. DORSEY, SOLICITOR GENERAL.

May it please Your Honor:

I want to thank you for the courtesy you have granted us in giving us unlimited time in which to argue this case and I desire, gentlemen of the jury, to commiserate you. But, as His Honor has told you, this is an important case; it is important to society, important to this defendant, important to me and it is important to you. I would not feel like slurring over it for the sake of your physical convenience, and indeed, as good citizens, although it does inconvenience you, I feel that you would not have me slur over it. It may be at some stages a little bit tedious, but a case that has consumed almost every day for one month, and a case of this magnitude and importance cannot be argued hurriedly. This case, gentlemen, is not only, as His Honor has told you, important, and as I have suggested, but it is extraordinary. It is extraordinary as a crime,—a most heinous crime, a crime of a demoniac, a crime that has demanded vigorous, earnest and conscientious effort on the part of your detectives, and on my part demands honest, earnest, conscientious consideration on your part. It is extraordinary because of the prominence, learning, ability, standing of counsel pitted against me,—four of them, the Messrs. Arnold, Rosser, the two Messrs. Haas.

Mr. Leonard Haas: Mr. Dorsey, I'm not of counsel in the case.

Three of them, then. It is extraordinary because of the defendant—it is extraordinary in the manner in which the gentlemen argue it, in the methods they have pursued in the

management—they have had two of the ablest lawyers,—Mr. Haas, also, I believe,—Mr. Rosser, "the rider of the wind, the stirrer of storm;" Mr. Arnold—and I say it with no disrespect, because I like him—is "as mild mannered a man as ever cut a throat or scuttled a ship." And their conduct throughout this case has been extraordinary. They have maligned and abused me; they have abused the detectives; they have heaped calumny on us to such an extent that that good lady, the mother of this defendant, was so wrought up that she arose, and in this presence denounced me as a dog. Ah, there's an old adage and it's true,—"When did any thief feel the halter draw with a good opinion of the law?" I don't want your good opinion in this case; I neither seek it nor ask it. If you put the stamp of your approval on me in this case, I doubt if I would believe in my own honesty.

Prejudice Charge Answered.

"Prejudice and Perjury," says Mr. Arnold; and they use the stereotyped phrase that it "fatigues their indignation." Ah, gentlemen, don't you let this "purchased indignation" disturb your nerves or deter you from your duty. "Purchased indignation!" You ought to have been indignant,—you are paid to be so. Prejudice and Perjury! Gentlemen, do you think that I, or that these detectives are actuated by prejudice? Would we as sworn officers of the law have sought to hang this man on account of his race and religion, and passed up Jim Conley, a negro? Prejudice! Prejudiced, when they arrested Gantt and released him? Prejudiced, when they had Newt Lee? No. But when you get Frank, then you have got prejudice at the same time.

Who?
P. 47
+ 66

Defense First Mentioned Race.

Now let's see about this thing. These gentlemen were disappointed because this case wasn't pitched on that theory.

Not a word emanated from this side, not a word indicating any feeling against, any prejudice against, any human being, black or white, Jew or Gentile. We didn't feel it, we would despise ourselves if we had appeared in this presence and asked you to render a verdict against any man, black or white, Jew or Gentile, on account of prejudice. But, ah! the first time it was ever brought into this case,—and it was brought in for a purpose, and I have never seen any two men manifest more delight or exultation than Messrs. Rosser and Arnold, when they put the questions to George Kendley at the eleventh hour. A thing they had expected us to do and which the State did not do because we didn't feel it and because it wasn't in this case. I will never forget how they seized it, seized with avidity the suggestion, and you know how they have harped on it ever since. Now, mark you, they are the ones that mentioned it, not us; the word never escaped our mouth.

Tribute to Jewish Race.

I say to you here and now that the race from which that man comes is as good as our race. His ancestors were civilized when ours were cutting each other up and eating human flesh; his race is just as good as ours,—just so good but no better. I honor the race that has produced a D'Israeli,—the greatest Prime Minister that England has ever produced; I honor the race that produced Judah P. Benjamin,—as great a lawyer as ever lived in America or England, because he lived in both places and won renown in both places. I honor the Strauss brothers,—Oscar, the diplomat, and the man who went down with his wife by his side on the Titanic. I roomed with one of his race at college; one of his race is my partner. I served with old man Joe Hirsch on the Board of Trustees of the Grady Hospital. I know Rabbi Marx but to honor him, and I know Doctor Sonn, of the Hebrew Orphans' Home, and I have listened to him with pleasure and pride.

But, on the other hand, when Becker wished to put to death his bitter enemy, it was men of Frank's race he selected. Abe Hummel, the lawyer, who went to the penitentiary in New York, and Abe Reuf, who went to the penitentiary in San Francisco; Schwartz, the man accused of stabbing a girl in New York, who committed suicide, and others that I could mention, show that this great people are amenable to the same laws as you and I and the black race. They rise to heights sublime, but they sink to the depths of degradation.

I wish, gentlemen, to read to you some authorities from the books referred to by Mr. Arnold,—first, though, I want to come to this: We don't ask a conviction of this man except in conformity with the law which His Honor will give you in charge. His Honor will charge you that you should not convict this man unless you think he's guilty beyond a reasonable doubt. My friend, Mr. Hooper, read to you, because you have to read the authorities upon which you are going to comment, in the opening, and I want to talk to you about them a little.

Meaning of Reasonable Doubt.

A great many jurors, gentlemen, and the people generally get an idea that there is something mysterious and unfathomable about this reasonable doubt proposition. It's as plain as the nose on your face. The text writers and lawyers and judges go around in a circle when they undertake to define it; it's a thing that speaks for itself, and every man of common sense knows what it is, and it isn't susceptible of any definition. One text writer says a man who undertakes to define it uses tautology,—the same words over again. Just remember, gentlemen of the jury, that it is no abstruse proposition, it is not a proposition way over and above your head,—it's just common sense, ordinary, every-day practical question. In the 83rd Georgia, one of our Judges defines it thus:

Authorities Quoted.

"A reasonable doubt is one that is opposed to an unreasonable doubt; it is one for which a reason can be given, and it is one that is based on reason, and it is such a doubt that leaves the mind in an uncertain and wavering condition, where it is impossible to say with reason nor certainty that the accused is guilty."

And as read to you from Wharton, the great authority, you are not to doubt as jurors, if you believe as men; that's all. If you have a doubt, it must be such a doubt as to control and decide your conduct in the highest and most important affairs of life. That's what they say. It isn't, gentlemen, as is said in the case of Johns vs. State, way back in the 33rd Georgia, "a vague, conjectural doubt or a mere guess that possibly the accused may not be guilty;" it isn't that; "it must be such a doubt as a sensible, honest-minded man would reasonably entertain in an honest investigation after the truth." That's in the 47th Georgia. "It must not be," as they say, gentlemen, in the case of Butler vs. State, 92nd Georgia, "A doubt conjured up;" or as they say in the 83rd Georgia, "A doubt which might be conjured up to acquit a friend." Of course, you can get up any kind of a doubt, but it must be an honest, sincere doubt, one which arises from the evidence or the lack of evidence; that's what controls. "It must not be," they say in the 63rd Georgia, "a fanciful doubt, a trivial supposition, a bare possibility of innocence,"—that won't do, that won't do; "it doesn't mean the doubt," they say in the 90th Georgia, "of a crank or a man with an over-sensitive nature, but practical, common sense is the standard."

Wharton's Rule.

Wharton, in his Criminal Evidence, says "The rule is not that there must be an acquittal in all cases of doubt, because, as we shall presently see, this would result in acquittal in all

cases, since" says this eminent authority, "there are no cases without doubt"—catch the idea? "Doubt of the character that requires an acquittal, must be far more serious than the doubt to which all human conclusions are subject;" it must, gentlemen, be a doubt so solemn and substantial as to produce in the juror's mind grave, grave uncertainty as to the verdict of guilty. "It is not," says Mr. Wharton, "mere possible doubt," because, says Chief Justice Shaw, "everything relating to human affairs and depending upon evidence, is open to some possible or imaginary doubt."

Now, this standard, gentlemen, is evident, because it is obvious to every intelligent person, and as this authority says, it is incapable, this reasonable doubt phrase, of a precise definition expressed in words, but a comprehension of its meaning follows instantly upon the mere use of the word. That's the principle. It is incapable of a precise definition, but a comprehension of its meaning follows instantly upon the mere use of the word. "This measure of proof can be established"—people think, you know, sometimes it is said circumstantial evidence is not as good as direct; listen to what this authority says: "This measure of proof can be established as well through circumstantial as direct evidence." Why shouldn't it? A number of facts proven by a number of people, which your common sense leads you to believe and see and know points to a conclusion that is consistent with an hypothesis and inconsistent with another hypothesis is just as much better than the direct, as evidence, and in the same proportion that the number of witnesses and incidents by whom those particular circumstances are established are better than the view of the witnesses who saw the particular thing. It is a popular fallacy that has no place in the court house—and I'm coming to his Durant case in a minute. "This measure of proof can be established as well," says this eminent lawyer and authority, accepted in all courts, and who wrote not in a spirit of prejudice and passion, "as well through circumstantial as direct evidence;"

and here in this case we have both circumstantial evidence and admissions.

Circumstantial Evidence Often Convicts.

Thus, if the circumstantial evidence satisfies the mind, then it is equal to positive evidence. That's all there is in the case. The question is whether they satisfy your mind on it. "Hence, with reasonable doubt as the measure of sufficient proof, limited by the qualification that the conclusion must not only be consistent with the guilt of the accused but inconsistent with any other reasonable conclusion, then the law, which is supposed to be the embodiment of wisdom, has safeguarded life and liberty to the highest degree that can be devised by human intelligence." This thing of the doctrine of reasonable doubt originated way back yonder, anyway, at a time when a man accused of crime wasn't allowed counsel. Whenever we come up fully abreast of the times in modern sciences, it's going to drop out of our law, too. The State has got all kinds of burdens and all kinds of difficulties in establishing a man's guilt. There never was a case that illustrated it better than this.

Now, as I said before, gentlemen, and as Wharton says, you are not at liberty to disbelieve as jurors if you believe as men. Now, let's get that in mind, let's take that logic,—don't you think that this thing of trying a man on circumstantial evidence is something that is so subtle and fine that your mind can't get hold of it,—that it's something so mysterious that you can't get hold of it; it's a common sense proposition, and when your mind takes hold of a thing as a man, then you have got it as a juror. Now, Judge Hopkins says, in the 42nd Ga., 406, "For a jury to acquit, turn a man loose, upon light, trivial, fanciful suppositions and remote conjectures it is a virtual disregard of the juror's oath." Oh, I know you can get up any kind of an excuse, anybody can. But when you do that, gentlemen of the jury, it must be outside of the jury box, and you must not acquit this man upon

light, trivial, fanciful suppositions and remote conjectures, because that's a disregard of your oath—of course, you won't disregard your oath.

Moral Certainty Is All That's Needed.

In the 92nd Ga., they speak of it thus: "It does not mean a vague, conjectural doubt, a doubt conjured up in the minds of the jury, it means a doubt that grows out of the evidence in the case, or the want of evidence"—remember that proposition when you get into your jury room. It means what? It means such a doubt as a juror would hesitate to act on in the most important business affairs of his own, in the ordinary walks of life. Now, it is said, gentlemen, in this book on Evidence,—Reynolds,—"absolute certainty is never attainable." You can't get it outside of mathematics, but you can get the moral certainty. That's what you are after.

Circumstantial Evidence Sometimes Best.

Now, we pass from the reasonable doubt proposition, and touch briefly on this circumstantial evidence. A great many people, over-conscientious and a little bit too refined for practical matters, sometimes want to set themselves up on a pinnacle and say they won't convict on circumstantial evidence. That's the merest bosh. The authorities say that it is the best evidence. People are getting better in that respect everywhere, they are coming to that realization. But even now, the best of juries are sometimes reluctant, for some reason or other, to convict, even though the evidence is as plain as it can be. Now, here's what is said by one of our most eminent Judges in the 26th Georgia: "Juries are generally too reluctant to convict on circumstantial evidence. While it is true that a man ought not to be punished for an offense of which he is guiltless, the jury ought not to pronounce the accused innocent, for the want of positive evidence of his guilt. Circumstances, satisfactorily proven,

which point to his guilt and which are irreconcilable with the hypothesis of his innocence, or which require explanation from him and may be explained by him, if he be innocent, but which are not so explained, ought to satisfy the conscience of every juror and justify him before that forum for rendering a verdict according to their almost unerring intellect. Any other rule will expose society to the ravages of the most depraved men. "The most atrocious crimes"—gentlemen, listen at this—"The most atrocious crimes are contrived in secrecy, and are perpetrated generally under circumstances which preclude the adduction of positive proof of the guilt of the person who committed them. But it must be remembered that, while this is true, circumstances which would authorize a bare conjecture of guilt are not sufficient to warrant conviction, but where they point to facts that are consistent with guilt and inconsistent with every other hypothesis, they are the best evidence."

The Durant Case.

Now, gentlemen, Mr. Arnold spoke to you about that Durant case. That case is a celebrated case. It was said that that was the greatest crime of the century. I don't know where Mr. Arnold got his authority for the statement that he made with reference to that case; I would like to know it.

Mr. Arnold: I got it out of the public prints, at the time, Mr. Dorsey, published all over the country,—I read it in the newspapers, that's where I got it.

On April 15, 1913, Mr. C. M. Pickett, the District Attorney of the City of San Francisco, wrote a letter—

Effort to Bar Telegram.

Mr. Arnold: I want to object to any communication between Mr. Pickett and Mr. Dorsey,—it's just a personal letter from this man, and I could write to some

other person there and get information satisfactory to me, no doubt, just as Mr. Dorsey has done, and I object to his reading any letters or communications from anybody out there.

Mr. Dorsey: This is a matter of public notoriety. Here's his reply to a telegram I sent him, and in view of his statement, I have got a right to read it to this jury.

Mr. Arnold: You can argue a matter of public notoriety, you can argue a matter that appears in the public prints,—my friend can, but as to his writing particular letters to particular men, why, that's introducing evidence, and I must object to it; he has got a right to state simply his recollection of the occurrence, or his general information on the subject, but he can't read any letters or telegrams from any particular people on the subject.

Mr. Dorsey: Mr. Arnold brought this in, and I telegraphed to San Francisco, and I want to read this telegram to the jury; now, can't I do it?

Mr. Arnold: If the Court please, I want to object to any particular letter or telegram,—I can telegraph and get my information as well as he can. I don't know whether the information is true, I don't know who he telegraphed about it; I have got a right to argue a matter that appears in the public prints, and that's all I argued,—what appears in the papers,—it may be right or wrong, but if my friend has a friend he knows there and writes and gets some information, that's introducing evidence and I want to put him on notice that I object to it. I have got the same right to telegraph there and get my own information. And, besides, my friend seems to know about that case pretty well, he's writing four months ago. Why did he do it?

Mr. Dorsey: Because I anticipated some such claim would be made here in this presence.

Mr. Arnold: You anticipated it, then, I presume, because you knew it was published; that's what I went on.

Mr. Dorsey: I anticipated it, and know the truth about that case.

Mr. Arnold: I object to his reading any communication unless I have the right to investigate it also; I am going only on what I read in the public press. April 15th is nearly two weeks before the crime is alleged to have been committed. I want to record an objection right now to my friend doing any such thing as that, reading a telegram from anybody picked out by my friend Dorsey, to give him the kind of information he wants for his speech, and I claim the right to communicate out there myself and get such information as I can, if he's given the right to do it.

The Court: I'll either have to expunge from the jury what you have told the jury, in your argument, or—

Mr. Arnold: I don't want it expunged, I stand on it.

The Court: I have either got to do one of the two—

Mr. Dorsey: No sir, can't I state to this jury what I knew about it, as well as he can state what he knows?

Mr. Arnold: Certainly he can, as a matter of public notoriety, but not as a matter of individual information or opinion.

Court Rules for Defense.

The Court: You can state, Mr. Dorsey, to the jury, your information about the Durant case, just like he did, but you can't read anything,—don't introduce any evidence.

Mr. Dorsey: My information is that nobody has ever confessed to the murder of Blanche Lamont and Minnie Williams. But, gentlemen of the jury, as I'll show you by reading this book, it was proved at the trial and there can be no question about the fact, Theodore Durant was guilty, the body of one of these girls having been found in the belfry of the church in question; and the other in the basement. Here's the book containing an account of that case, reported in the 48th Pacific Reporter, and this shows, gentlemen of the jury, that the body of that girl, stripped stark naked, was found

in the belfry of Emanuel Church in San Francisco after she had been missing for two weeks. It shows that Durant was a medical student of high standing and a prominent member of the church, with superb character,—a better character than is shown by this man, Leo M. Frank, because not a soul came in to say that he didn't enjoy the confidence and respect of every member of that large congregation and all the medical students with whom he associated.

Three Years to Hang Durant.

Another thing, this book shows that the crime was committed in 1895, and this man Durant never mounted the gallows until 1898, and the facts are that his mother took the remains of her son and cremated them because she didn't want them to fall into the hands of the medical authorities, as they would have done in the State of California had she not made the demand and received the body. Hence, that's all poppy-cock he was telling you about. There never was a guiltier man, there never was a man of higher character, than Theodore Durant, and there never was a more courageous jury or better satisfied community than the jury that tried him and the people of San Francisco, where he lived and committed his crime and died.

In this case, now, I'll read you, "The contention of the appellant next to be considered is that the evidence is insufficient to justify the verdict, and that the verdict is contrary to the evidence in this, that the evidence fails to show how, when or where Blanche Lamont was murdered, or that the defendant in any way was instrumental in causing her death. On April 15th the defendant was arrested. On April 3, 1895, Blanche Lamont was living with her aunt, Mrs. Noble, in the City and County of San Francisco. She was in person rather tall and slight, and weighed about 130 pounds. Her age was 21 years. She was a school girl attending the High School and Normal School, and upon the morning of April 3, 1895"—and this case wasn't decided until March 3,

1897, and he wasn't hung until 1898—"she was a school girl attending the High School and the Normal School, and upon the morning of April 3, 1895, left her home with her strap of books to join her classes. She met defendant while on the way (such is his testimony), and he accompanied her for a part of the journey. She was at school during the day's session, and at its close, about 3:00 P. M., left with the other pupils. She did not return home, and never after that day was seen alive. Shortly after 9:00 o'clock, upon the morning of April 14th, two police officers and the janitor attempted to open the door leading to the belfry of Emanuel Baptist Church. They were prosecuting a search for Blanche Lamont. The knob of the door was gone and the lock mutilated, so that the janitor's key couldn't open it. They forced the door, and one of the officers, ascending the stairs, found the body of a girl lying on the top landing, in the southeastern corner of the belfry. It was that of Blanche Lamont."

Lust Murderers.

There are lust murderers,—there are people that are in the height of exultation and their passion is gratified by choking people to death with hands and cords, things like that,—plenty of instances of it,—this man stripping this girl absolutely naked— "The body was naked, lying upon its face, the feet close together, her hands folded upon the breast, the head inclined a little to the left. There were two small blocks, apparently employed to hold the head in an upright position. Decomposition was well advanced, and by medical testimony, life had been extinct for about two weeks. An examination and autopsy of the corpse revealed seven finger nail incisions upon the left side of the throat, and five upon the right, a depression of the larynx and a congestion of the trachea, larynx, lungs and brain. Strangulation was the cause of death. A search brought to light the clothing and apparel of the girl, hidden in and about the rough woodwork of the belfry, and also her book strap and school books."

"Upon April 15, the defendant was arrested and charged with this murder. At that time, Durant was a young man, 24 years of age, a student of the Cooper Medical College of San Francisco, and a member of the Signal Corps of the National Guard of the State. He was interested in religious work"—and, of course, that embraces charity work—"was an attendant, if not a member of Emmanuel Baptist Church, was a member of the Christian Endeavor Society, was Assistant Superintendent of the Sunday School, and was librarian of the church library. As is abundantly testified to, he bore the esteem of his fellows as a zealous, earnest and upright young man, of commendable character and of sincere Christian life. When arrested, he was upon service of the Signal Corps, to which he was attached. Upon the trial, his defense was an alibi,"—the last resort of the guilty man—"He declared that he had seen Blanche Lamont in the morning of April 3rd, when she was on her way to school but never again thereafter, that he himself had gone to his medical college and there had attended a lecture at the time when, under the contention of the prosecution, the girl had been by him murdered in the church.

Durant a Church Worker.

"By the prosecution it was shown that Blanche Lamont was a regular attendant of the Emmanuel Church, and belonged to the Society of Christian Endeavor, of which Durant was also a member. The two were well acquainted; indeed, they seemed to have stood in their intercourse upon terms of cordial and trusted friendship. They met at religious and social gatherings, to and from which Durant frequently escorted the girl in company with her sister and others of their social circle. Durant had a key to the side door of the church, and was thoroughly familiar with the building and premises.

"Mrs. Mary Vogel lived across the street from the school Blanche Lamont was attending. She saw defendant a little

after two o'clock on the afternoon of April 3, in front of the schoolhouse, walking up and down, apparently in waiting. When school closed, she noticed two girls coming out together. One of them carried books in a strap. They walked to the corner of the street, where they stopped for a car. The defendant joined them as they were about to board it. One of the girls went inside, the other sat outside upon the dummy. The defendant joined this girl and seated himself beside her; Minnie Edwards testified that it was she who accompanied Blanche Lamont from school that afternoon. They were joined by Durant at the corner. Blanche Lamont and he sat together outside, while she found a seat within the car. Blanche Lamont had her school books with her. Mrs. Alice Dogan, at the time of these occurrences, was a pupil at the same school. Upon that afternoon, she, too, saw Blanche Lamont upon the dummy in company with the defendant. May Lanigan, another of the school girls, also saw the two upon the dummy. This was from five to ten minutes after three o'clock. Mrs. Elizabeth Crossett had known the defendant for about four years. Between half-past three and four o'clock of this afternoon, while she was upon a Valencia street car traveling towards 25th street, she saw defendant. He was seated upon the dummy of her car in company with a young lady whom she did not know but whose description answered to that of the murdered girl. The two were in conversation and left the car at 21st or 22d Street, and walked in the direction of Bartlett Street. The Emmanuel Baptist Church is situated upon Bartlett Street, between 22nd and 23rd streets. Martin Quinland, between ten and twenty minutes after four o'clock of this afternoon, saw the defendant and a young lady whose description corresponded to that of the girl, and who carried a loose package in her hand by a string or strap, walking along Bartlett Street, from Twenty-second Street and towards Twenty-third Street. They were upon the same side of the street as the church and were walking towards it. Mrs. Caroline Leak lived upon Bartlett Street, almost directly opposite the

church. She had been an attendant there at divine service for many years; she had known defendant for the past three or four years; she also knew Blanche Lamont. Between four and half-past four of this afternoon, she saw Durant and a young lady pass through the gate into the church yard and on towards the side door. His companion she could not identify positively, but from her appearance, thought at the time that it was Blanche Lamont or another young lady of similar size and height. This young lady testified she was not with defendant at any time upon that day, and no pretense is made that she was. George King was a member of the church and its organist. He knew defendant, and the two were very friendly. At five o'clock on this afternoon, he entered the church by the front door, letting himself in with his key. He noticed a strong smell of gas, and went forthwith into the library to see if it was escaping there. He failed to find the leak. Thence, closing the library door, he proceeded directly to the Sunday School room, and sitting at the piano, began to play. He played for two or three minutes, when defendant, Durant, came through the folding doors to the rear, and stood looking at him. 'I asked him what was the matter, because of his pale condition. He had his coat off and his hat off'—no scratches, no blood. 'His hair was somewhat disheveled. He came through and then told me that he had been fixing the gas above the auditorium' —not a financial sheet—and had been overcome by it to such a degree that he could hardly descend the ladder."

Similarity of Durant and Frank Cases.

On account of the inclemency of the weather this man (Frank) gave up the ball game. "He seemed ill"—this man seemed nervous. "He handed me a fifty-cents piece and asked me to go and get some bromo seltzer"—this man wanted coffee and breakfast. "Witness procured the seltzer, and upon his return found the defendant either standing in the lobby or lying upon the platform in the Sunday School

room." This man was found running out to meet Newt Lee, washing his hands and nervous. "He thinks, however, that defendant was lying down. Defendant took a dose of the seltzer, which seemed to nauseate him somewhat. The two sat and talked together for a few minutes, then went upstairs to the choir loft and carried down a small organ. Defendant appeared weak and had to stop two or three times to rest"—this man trembled in Darley's lap, couldn't nail the back door up, couldn't run the elevator, he could open the safe because he had done that often, he talked to the people at home—if he did talk to them—without manifestations of nervousness, if what they say be true, but when confronted with the officers of the law his voice, his eye, his every demeanor showed guilt.

Durant's Actions After Crime.

"Defendant appeared weak and had to stop two or three times to rest"—you'll always find it that way: "Then they went to the library door, which Durant unlocked, and entering, put on his hat and coat, which were lying on a box in the corner. Witness had not seen the hat or coat when he went into the library the first time that afternoon. They then left the church and walking some distance together, separated and went to their respective homes. It was then about six o'clock.

"Upon the morning of April 13th, ten days after the disappearance of Blanche Lamont and one day before the discovery of the body, her aunt, Mrs. Noble, received through the mail a package which contained all of the rings worn by her when she left her home. The rings were enclosed in a copy of a daily newspaper, The Examiner, and upon the paper written the names of George King and Professor Shurenstein. King was a common friend of Durant and Blanche Lamont. Professor Shurenstein was her music teacher. The paper and wrapper were exhibited to the jury, together with admitted samples of defendant's writing. Upon a morning

between the 4th and 10th of April, Adolph Oppenheimer, a pawnbroker, was offered for sale a gold ring containing a diamond chip. The ring was identified as one worn by Blanche Lamont at the time of her disappearance and subsequently returned to her aunt through the mail. The person offering the ring for sale was the defendant."

No doubt, Mr. Arnold—of course, he wouldn't mislead you, I know that he's an honorable man and wouldn't think of such a thing, but I'm just putting the record up to you.

"The person offering the ring for sale was the defendant. William Phillips testified that upon a day in the first part of April, he saw defendant standing in front of Oppenheimer's place, between ten and eleven o'clock in the morning. Doctor G. F. Graham was a student and classmate of Durant at the Cooper Medical College. From 3:30 to 4:15 of April 3rd, Doctor Cheney, of that college, delivered a lecture to his class upon the sterilization of milk. Doctor Graham attended that lecture and took notes of it. The defendant, in support of his alibi, claimed to have attended the lecture"—they put up any kind of claims when they are backed right up in the corner and have got to do it, and he might have known, this fellow Durant might have known they would catch him out on that proposition; this man here, I'll show you, was caught out in the same way. "Defendant, in support of his alibi, claimed to have attended the lecture and likewise to have taken original notes, which were admitted in evidence. Doctor Graham testified that after Durant's arrest and before the trial, he visited him with a friend. Durant requested his companion to withdraw, that he might talk to Doctor Graham alone. When he had done so, defendant informed Doctor Graham that he had no notes of the lecture, and requested the Doctor to lend him his, saying that if he could get them he could establish an alibi."

Going to his friend, just like this man here went to his friends. Now, let's see if Graham responded like this defendant's friends did.

Framing Up His Alibi.

"Defendant told him that he could take the notes to Durant's house, get his book and put them in it and that the book could be brought to him in jail, or that the witness could commit his notes to memory, come to the jail and repeat them to him. This summarization of the evidence is not designed to be exhaustive. Much that is cumulative upon the part of the people is omitted. No analysis is made of the alibi of the defense, nor of the claims of the prosecution that, when not completely demolished, it stands upon the unsupported word of the defendant. Enough has been set forth to show that the verdict and judgment find support from legal and sufficient evidence, and when that point is reached, the inquiry of this Court comes to an end, saving in those exceptional cases, of which this is not one, where the evidence against the defendant is so slight as to make clear the inference that the verdict must have been rendered under the influence of passion or prejudice.

By this evidence, the defendant and Blanche Lamont (she with her strap of books) entered Emmanuel Church at about half past four o'clock in the afternoon of April 3rd. At five o'clock defendant was seen there and explains his distressed condition as caused by the inhalation of gas. At six o'clock he leaves the church. Blanche Lamont was never again seen alive. Two weeks after, her nude and decomposed body is found in the church. She had been strangled and her corpse dragged to the belfry."

Motive in Moving Body.

He was the librarian, he didn't want to leave it there in the library, he wanted it in the belfry. This man wanted it off the second floor. Tell me, if you will, men of common sense and reason, tell me where was any motive in this man to have moved Blanche Lamont from the library, he being librarian, except the same motive that prompted Frank in

moving that body from his office floor down into the basement?

"Two weeks after, her nude and decomposed body is found in the church. She had been strangled and her corpse dragged to the belfry." "The clothes she wore on leaving home are secreted about the floors and rafters. Her books are found still tightly strapped. These facts, with the others set forth, are sufficient to justify the hypothesis of defendant's guilt and to exclude every other reasonable hypothesis than that of his guilt. Such evidence is clearly sufficient to warrant and uphold the determination that the girl was strangled to death at the hands of the defendant upon the afternoon of April 3rd. The evidence of the defendant's previous good character, so fully established, was a circumstance making strongly in his favor. We are asked to say that the jury disregarded it in reaching their verdict, but this we cannot do. They were fully and fairly instructed upon the matter, and it must be presumed that the instructions were regarded."

That, gentlemen of the jury, is the case that Mr. Arnold says the jury went wrong in convicting. They didn't. The judge that tried it approved the verdict; the high court approved the verdict; the community and the civilized world, notwithstanding he was a professed Christian and member of the church and societies,—and it isn't true that any man ever confessed it, because the dastardly deed was done by Theodore Durant.

Now, let me read you a little bit about this thing of good character—before I get down to the discussion of the State's case I want to clear out the underbrush, and let you understand the legal principles, because His Honor has got to charge you, and I'm not going to mislead you either. I'm just going to do my plain duty here, and expect you to do yours, that's all anybody wants—if you think this man is innocent, why, you turn him loose, that's what you do; if you think he's guilty, you put a cord around his neck—have the courage to do it, and the manhood, and you will, too.

Frank Put Character in Issue.

Now, let's examine this good character a little. I grant you, good character spells a whole lot; but first, ah, first, let's establish good character. It is presumed—had he not put his character in issue, it would have been presumed—and the State would have been absolutely helpless—that this man was as good a man as lived in the City of Atlanta. It's a mighty easy thing, if a man is worth anything, if a man attains to any degree of respectability, it's a mighty easy thing to get some one to sustain his character; but it's the hardest thing known to a lawyer to get people to impeach the character of another. In the Durant case his character was unimpeached. The defendant here put his character in issue and we accepted the challenge, and we met it, I submit to you. Now, if we concede that this defendant in this case was a man of good character—a thing we don't concede—still, under your oath and under the law that His Honor will give you in charge, as is laid down in the 88th Georgia, page 92, sub-head 11, "Proof of good character will not hinder conviction, if the guilt of the defendant is plainly proved to the satisfaction of the jury."

Vain Effort to Prove Character.

First, you have got to have the good character, before it weighs a feather in the balance, and remember, that the hardest burden, so far as proof is concerned, that ever rests on anybody, is to break down the character of a man who really has character; and I ask you if this defendant stands before you a man of good character? Mr. Arnold, along with all this other dramatic performance of his—I don't know who he was threatening, the Judge or you or me or all of us—"I move for a mistrial"—all that kind of business, all along through the case here—stood up and did that, I suppose, maybe, I don't know, it may be an attribute of a great lawyer; I don't want to be great if, in the defense of any man, I

have to stand up and say, contrary to law and contrary to good principles and morals, before the witnesses are put on the stand, that they are "liars or crack-brain fanatics," and he wouldn't have done that either if he hadn't realized the force of the evidence banked up here against the man that, on the 26th day of April, snuffed out the life of little Mary Phagan. But in his desperation he stood up in this presence and called nineteen or twenty of these reputable, high-toned girls, though they be working girls, "crack-brain fanatics and liars," and they have hurled that word around here a good deal, too, they have hurled that word around here a good deal. If that's an attribute of great men and great lawyers, I here and now proclaim to you I have no aspirations to attain them. Not once will I say that anybody has lied, but I'll put it up to you as twelve honest, conscientious men by your verdict to say where the truth lies and who has lied. I'm going to be satisfied with your verdict, too—I know this case and I know the conscience that abides in the breast of honest, courageous men.

Now, the book says that if a man has good character, nevertheless it will not hinder conviction, if the guilt of the defendant is plainly proved to the satisfaction of the jury—as it was in the Durant case, and I submit that, character or no character, this evidence demands a conviction. And I'm not asking you for it either because of prejudice—I'm coming to the perjury after a bit. Have I so forgotten myself that I would ask you to convict that man if the evidence demanded that Jim Conley's neck be broken?

Letters to Grand Jury.

I want to talk a little bit about those letters to the Grand Jury, too—the conscientious opinion of our friend Billie Owens, the man that went over here with Brent—a man that used to work for the Stevens Lumber Company—Fleming, Fleming, the man that also wrote a note to the Grand Jury, and the man that also—

Mr. Rosser: There's no evidence of that, Mr. Dorsey, at all.

Mr. Dorsey: Doctor Owens says a man by the name of Fleming went there—

Mr. Rosser: I know, but there's no evidence that he wrote such a note, he stated that he didn't know him and that he didn't know his handwriting.

Mr. Dorsey: That's true, but he said that the name was the same.

Mr. Rosser: Yes, but he can't tell about that, he said plainly that he didn't know his handwriting.

Mr. Dorsey: Well, I don't care about that, that's not important, anyway—

The Court: I understand Mr. Dorsey says he don't insist on it if there isn't any evidence of it.

A man by the name of Fleming went over there in the basement and pulled off that little farce with Owens—I guess I can say that—and Owens is the man whose conscience moved him to try to dictate to the Grand Jury, and Owens is the man whose counsel sits there. All right; now Mr. Arnold said yesterday, and I noticed it, though it wasn't in evidence, that Jim Conley wasn't indicted. No, he will never be, for this crime, because there is no evidence—he's an accessory after the fact, according to his own admission, and he's guilty of that and nothing more. And Billie Owens may feel his conscientious pangs, sitting up yonder in his office, building houses and squirting something into people's noses and mouths, but the man that acts as a juror will never so far forget himself as to put a rope around that negro's neck for a crime that he didn't commit. And I'm here to tell you that, unless there's some other evidence besides that which has been shown here or heretofore, you've got to get you another Solicitor General before I'll ask any jury to hang him, lousy negro though he may be; and if that be treason, make the most of it. I have got my own conscience to keep, and I wouldn't rest quite so well to feel that I had been in-

strumental in putting a rope around the neck of Jim Conley for a crime that Leo M. Frank committed. You'll do it, too. Of course, if the guilt of the accused is plainly proved to the satisfaction of the jury, it is their duty to convict, notwithstanding good character. Is that right? Of course, it is. But you haven't got good character in this case even as a starting point upon which to predicate that proposition.

Defense's Right to Cross-examine.

Let's get on a little bit. Mark you, I want you to bear in mind, now, we haven't touched the body of this case, we have been just clearing up the underbrush—we'll get to the big timber after awhile. "Where character is put in issue"—and the State can't do it, it rests with him—"Where character is put in issue, the direct examination must relate to the general reputation, good or bad;" that is, whoever puts character in issue, can ask the question with reference to the general reputation, good or bad, as the case may be, "but on cross examination particular transactions or statements of single individuals may be brought into the inquiry in testing the extent and foundation of the witnesses' knowledge, and the correctness of his testimony on direct examination."

We did exercise that right in the examination of one witness, but knowing that we couldn't put specific instances in unless they drew it out, I didn't want even to do this man the injustice, so we suspended, and we put it before this jury in this kind of position—you put his character in, we put up witnesses to disprove it, you could cross examine every one of them and ask them what they knew and what they had heard and what they had seen; we had already given them enough instances, but they didn't dare, they didn't dare to do it. Mark you, now, here's the law:

Why Didn't They Cross-examine?

"Where character is put in issue, the direct examination must relate to the general repuation;" we couldn't go fur-

ther, but on cross examination, when we put up these little girls, sweet and tender, ah, but "particular instances or statements of single individuals, you could have brought into the inquiry," but you dared not do it. You tell me that the testimony of these good people living out on Washington Street, the good people connected with the Hebrew Orphans' Home, Doctor Marx, Doctor Sonn, you tell me that they know the character of Leo M. Frank as these girls do, who have worked there but are not now under the influence of the Nation Pencil Company and its employees? Do you tell me that if you are accused of a crime, or I am accused of a crime, and your character or my character is put in issue, that if I were mean enough to do it, or if Messrs. Starnes and Campbell were corrupt enough to do it, that you could get others who would do your bidding? I tell you, in principle and common sense, it is a dastardly suggestion. You know it, and I know you know it, and you listen to your conscience and it will tell you you know it, and you have got no doubt about it. The trouble about this business is, throughout the length and breadth of our land, there's too much shehanigane and too little honest, plain dealings; let's be fair, let's be honest, let's be courageous! Tell me that old Pat Campbell or John Starnes or Mr. Rosser—in whose veins, he says, there flows the same blood as flows in the attorney's veins—that they could go and get nineteen or twenty of them, through prejudice and passion to come up here and swear that that man's character is bad and it not be true? I tell you it can't be done, and you know it.

His Friends Didn't Know Him.

Ah, but, on the other hand, Doctor Marx, Doctor Sonn, all these other people, as Mr. Hooper said, who run with Doctor Jekyll, don't know the character of Mr. Hyde. And he didn't call Doctor Marx down to the factory on Saturday evenings to show what he was going to do with those girls, but the girls know. And right here, in passing—I'm coming back to

it, I'm going to have a good bit more to say—but if old Jim Conley didn't get every bird in the covey when he shot in amongst them, my Lord, didn't he nevertheless shoot right in among them? He flushed Daisy—let Dalton be as bad as you say he is, nevertheless, it's strange, Jim, in poking in that hole, rousted out Daisy and Dalton, and also said that Frank was there; and by the undisputed evidence of a reputable man who saw Dalton go in there, it is certainly shown that Dalton was there. "Where the defendant put his character in issue, it is allowable on cross examination to ask a witness called to establish good character, if the witness on a certain occasion came upon the scene immediately after the defendant, and made a serious attack with a weapon upon the defendant," etc.

"Now, gentlemen, put yourself in this man's place. If you are a man of good character, and twenty people come in here and state that you are of bad character, your counsel have got the right to ask them who they ever heard talking about you and what they ever heard said and what they ever saw. Is it possible, I'll ask you in the name of common sense, that you would permit your counsel to sit mute? You wouldn't do it, would you? If a man says that I am a person of bad character, I want to know, curiosity makes me want to know, and if it's proclaimed, published to the world and it's a lie, I want to nail the lie—to show that he never saw it, and never heard it and knows nothing about it. And yet, three able counsel and an innocent man, and twenty or more girls all of whom had worked in the factory but none of whom work there at this time, except one on the fourth floor, tell you that that man had a bad character, and had a bad character for lasciviousness,—the uncontrolled and uncontrollable passion that led him on to kill poor Mary Phagan. This book says it is allowable to cross-examine a witness, to see and find out what he knows, who told him those things,—and I'm here to tell you that this thing of itself is pregnant, pregnant, pregnant with significance, and does not comport with innocence on the part of any man. We furnished him

the names of some. Well, even by their own witnesses, looks like to me there was a leak, and little Miss Jackson dropped it out just as easy. Now, what business did this man have going in up there, peering in on those little girls? —the head of the factory, the man that wanted flirting forbidden? What business did he have going up into those dressing rooms? You tell me to go up there to the girls' dressing room, shove open the door and walk in is a part of his duty, when he has foreladies to stop it? No, indeed. And old Jim Conley may not have been so far wrong as you may think. He says that somebody went up there that worked on the fourth floor, he didn't know who. This man, according to the evidence of people that I submit you will believe, notwithstanding the fact that Mr. Reuben R. Arnold said it was a lie and called them hair-brained fanatics,—according to the testimony even of a lady who works there now and yet is brave enough and courageous enough to come down here and tell you that that man had been in a room with a lady that works on the fourth floor; and it may have been that he was then, when he went in there on this little Jackson girl and the Mayfield girl and Miss Kitchens, looking out to see if the way was clear to take her in again,—and Miss Jackson, their witness, says she heard about his going in there three or four times more than she ever saw it, and they complained to the fore ladies—it may have been right then and there he went to see some woman on the fourth floor that old Jim Conley says he saw go up there to meet him Saturday evening, when all these good people were out on Washington Street and Montags, and the pencil factory employees, even, didn't know of the occurrence of these things.

Little Jackson Girl's Evidence.

Now, that's the way you've got it. Of course, a juror, you know, if he just wants to do a thing, you know, it's his conscience, but I'm talking to you as sensible men, as men who

are just exactly like you said you were,—impartial, not prejudiced. What do you think about it, in the room,—oh, me, in the room with Miss Carson—they wouldn't let me ask how long he stayed in there, I couldn't ask that—I didn't quite understand the principle upon which that went out, but whatever the Judge says must be the law; but he went in there with her, and he came out with her, and surely, surely, he wasn't in there then to stop flirting! That came out from their own witness, the little Jackson girl, and I suppose she must be classed, under Mr. Arnold's way of looking at it, as a crack-brained fanatic telling a bald-faced lie. Miss Mayfield, who works there, denied it; Miss Kitchens, one of the ladies who works on the fourth floor—Lord me, how often did Mr. Arnold say he was going to ask this question of every lady,—with that handsome face of his, and that captivating manner—"We are going to ask this question of every lady who works on the fourth floor"—and lo and behold up comes Miss Kitchens and she herself named another—possibly others—that hadn't been put up by them, and you don't know today, right now, except from the fact that Mr. Arnold said it, whether you have seen every woman that worked on the fourth floor or not, and if he wasn't any more accurate about that than he was about this Durant case, there's no telling how many people on the fourth floor haven't been brought up here.

(At this point the Court took a recess until tomorrow, Saturday, August 23, 1913, at 9:00 o'clock, A. M.)

Saturday, August 23, 1913, 9 o'clock, A. M.

May it please Your Honor and Gentlemen of the Jury:

Frank's Bad Character Proven.

I was just about concluding, yesterday, what I had to say in reference to the matter of character, and I think that I demonstrated by the law, to any fair-minded man, that this

defendant has not a good character. The conduct of counsel in this case, as I stated, in failing to cross-examine, in refusing to cross-examine these twenty young ladies, refutes effectively and absolutely the claims of this defendant that he has good character. As I said, if this man had had a good character, no power on earth could have kept him and his counsel from asking those girls where they got their information, and why it was they said that this defendant was a man of bad character. Now, that's a common sense proposition,—you'd know it whether it was in a book or not. I have already shown you that under the law, they had the right to go into that character, and you saw that on cross-examination they dared not do it. Now let's see what the law says on that proposition—if I can find it, and I have it here,—an authority that puts it right squarely,—that whenever any man has evidence—decided in 83rd Ga., 581—"whenever anybody has evidence in their possession, and they fail to produce it, the strongest presumption arises that it would be hurtful if they had, and their failure to produce evidence is a circumstance against them."

Defense Dared Not Cross-examine.

You don't need any law book to make you know that that's true, because your common sense tells you that whenever a man can bring evidence, and you know that he has got it and don't do it, the strongest presumption arises against him. And you know, as twelve honest men seeking to get at the truth, that the reason these able counsel didn't ask those "hair-brained fanatics," as Mr. Arnold called them, before they had ever gone on the stand,—girls whose appearance is as good as any they brought, girls that you know by their manner on the stand spoke the truth, girls who are unimpeached and unimpeachable, was because they dared not do it. You know it; if it had never been put in a law book you'd know it. And then you tell me that because these good people from Washington Street come down here and say

that they never heard anything, that he's a man of good character? Many a man has gone through life and even his wife and his best friends never knew his character; and some one has said that it takes the valet to really know the character of a man. And I had rather believe that these poor, unprotected working girls, who have no interest in this case and are not under the influence of the pencil company or Montag or anybody else, know that man, as many a man has been heretofore, is of bad character than to believe the Rabbi of his church and the members of the Hebrew Orphans Home.

Sometimes, you know, a man of bad character uses charitable and religious organizations to cover up the defects, and sometimes a consciousness in the heart of a man will make him over-active in some other line, in order to cover up and mislead the public generally. Many a man has been a wolf in sheep's clothing; many a man has walked in high society and appeared on the outside as a whited sepulcher, who was as rotten on the inside as it was possible to be.

Reputation Versus Character.

So he has got no good character, I submit, never had it; he has got a reputation,—that's what people say and think about you,—and he has got a reputation for good conduct only among those people that don't know his character. But suppose that he had a good character; that would amount to nothing. David of old was a great character until he put old Uriah in the fore-front of battle in order that he might be killed,—that Uriah might be killed, and David take his wife. Judas Iscariot was a good character, and one of the Twelve, until he took the thirty pieces of silver and betrayed our Lord Jesus Christ. Benedict Arnold was brave, enjoyed the confidence of all the people and those in charge of the management of the Revolutionary War until he betrayed his country. Since that day his name has been a synonym for

infamy. Oscar Wilde, an Irish Knight, a literary man, brilliant, the author of works that will go down the ages,—Lady Windemere's Fan, De Profundis,—which he wrote while confined in jail; a man who had the effrontery and the boldness, when the Marquis of Queensbury saw that there was something wrong between this intellectual giant and his son, sought to break up their companionship, he sued the Marquis for damages, which brought retaliation on the part of the Marquis for criminal practices on the part of Wilde, this intellectual giant; and wherever the English language is read, the effrontery, the boldness, the coolness of this man, Oscar Wilde, as he stood the cross examination of the ablest lawyers of England,—an effrontery that is characteristic of the man of his type,—that examination will remain the subject matter of study for lawyers and for people who are interested in the type of pervert like this man. Not even Oscar Wilde's wife,—for he was married and had two children,—suspected that he was guilty of such immoral practices, and, as I say, it never would have been brought to light probably, because committed in secret, had not this man had the effrontery and the boldness and the impudence himself to start the proceeding which culminated in sending him to prison for three long years. He's the man who led the aesthetic movement; he was a scholar, a literary man, cool, calm and cultured, and as I say, his cross examination is a thing to be read with admiration by all lawyers, but he was convicted, and in his old age, went tottering to the grave, a confessed pervert.

"Good Character" of Wilde.

Good character? Why, he came to America, after having launched what is known as the "Aesthetic movement," in England, and throughout this country lectured to large audiences, and it is he who raised the sunflower from a weed to the dignity of a flower. Handsome, not lacking in physi-

cal or moral courage, and yet a pervert, but a man of previous good character.

Reuf Had "Character," Too.

Abe Reuf, of San Francisco,—a man of his race and religion,—was the boss of the town, respected and honored, but he corrupted Schmitt, and he corrupted everything that he put his hands on, and just as a life of immorality, a life of sin, a life in which he fooled the good people when debauching the poor girls with whom he came in contact has brought this man before this jury, so did eventually Reuf's career terminate in the penitentiary.

I have already referred to Durant. Good character isn't worth a cent when you have got the case before you. And crime don't go only with the ignorant and the poor. The ignorant, like Jim Conley, as an illustration, commit the small crime, and he doesn't know anything about some of this higher type of crimes; but a man of high intellect and wonderful endowments, which, if directed in the right line, bring honor and glory, if those same faculties and talents are perverted and not controlled, as was the case with this man, they will carry him down.

Mayor McCue's "Character."

Look at McCue, the Mayor of Charlottesville; a man of such reputation that the people elevated him to the head of that municipality, but notwithstanding that good reputation, he didn't have rock bed character, and, becoming tired of his wife, he shot her in the bath tub, and the jury of gallant and noble and courageous Virginia gentlemen, notwithstanding his good character, sent him to a felon's grave.

The Preacher Richeson.

Richeson, of Boston was a preacher, who enjoyed the confidence of his flock. He was engaged to one of the wealthiest and most fascinating women in Boston, but an entanglement with a poor little girl, of whom he wished to rid himself, caused this man Richeson to so far forget his character and reputation and his career as to put her to death: And all these are cases of circumstantial evidence. And after conviction, after he had fought, he at last admitted it, in the hope that the Governor would at least save his life, but he didn't do it, and the Massachusetts jury and the Massachusetts Governor were courageous enough to let that man who had taken that poor girl's life to save his reputation as the pastor of his flock, go, and it is an illustration that will encourage and stimulate every right-thinking man to do his duty.

The Beattie Case.

Then, there's Beattie. Henry Clay Beattie, of Richmond, of splendid family, a wealthy family, proved good character, though he didn't possess it, took his wife, the mother of a twelve-months old baby, out automobiling, and shot her; yet that man, looking at the blood in the automobile, joked! joked! joked! He was cool and calm, but he joked too much; and although the detectives were abused and maligned, and slush funds to save him from the gallows were used, in his defense, a courageous jury, an honest jury, a Virginia jury measured up to the requirements of the hour and sent him to his death; thus putting old Virginia and her citizenship on a high plane. And he never did confess, but left a note to be read after he was dead, saying that he was guilty.

Crippen an Eminent Doctor.

Crippen, of England, a doctor, a man of high standing, recognized ability and good reputation, killed his wife be-

cause of infatuation for another woman, and put her remains away where he thought, as this man thought, that it would never be discovered; but murder will out, and he was discovered and he was tried, and be it said to the glory of old England, he was executed.

Gentlemen, you have got an opportunity that comes to few men; measure up to it. Will you do it? If not, let your conscience say why not? Tell me as an honest man may, why not?

But, you say, you've got an alibi. Now, let's examine that proposition a little bit. An alibi—Section 1018 defines what an alibi is. "An alibi, as a defense, involves the impossibility"—mark that—"of the prisoner's presence at the scene of the offense at the time of its commission." "An alibi involves the impossibility, and the range of evidence must be such as reasonably to exclude the possibility of guilt"—and the burden of carrying that alibi is on this defendant. "It involves the impossibility"—they must show to you that it was impossible for this man to have been at the scene of that crime. The burden is on them; an alibi, gentlemen of the jury, while the very best kind of defense if properly sustained, is absolutely worthless—I'm going to show you in a minute that this alibi is worse than no defense at all. I want to read you a definition that an old darkey gave of an alibi, which I think illustrates the idea. Rastus asked his companion, "What's this here alibi you hear so much talk about?" And old Sam says, "An alibi is proving that you was at the prayer meeting, where you wasn't, to show that you wasn't at the crap game, where you was."

Now, let's see this table—I just want to turn that around for half a minute, now, and then I want to turn it to the wall again and I want it to stay turned to the wall.

Contradiction by Frank.

"One P. M. Frank leaves the factory;" that's mighty nice —on the chart. Now, turn it to the wall, turn it to the wall;

let it stay turned to the wall because it isn't sustained by the evidence in the case,—it's ruined by the statement of this defendant himself, Frank's statement, made at Police Headquarters, taken down by G. C. February, on Monday, April 28th, 1913, and he says, "I didn't (that morning) lock the door"—I'm interpolating that—"because the mail was coming in, I locked it at 1:10, when I went to leave." Up goes your alibi, punctured by your own statement, when you didn't know the importance of the time element in this case, and yet, honorable gentlemen, for the purpose of indelibly impressing this on your mind, get up this beautiful chart and stick in there that he says he left at one o'clock. If he swore that he left at one o'clock, when he went on this stand, it was because here and in this presence,—and you know it,—he saw the importance of leaving that factory ten minutes earlier than he ever realized when he made this statement on April 28th, before his attorney, Mr. Luther Z. Rosser—"I left at 1:10."

Admitted Leaving at 1:10.

Now, right here, let me interpolate, this man never made an admission, from the beginning until the end of this case, except he knew that some one could fasten it on him,—wherever he knew that people knew he was in the factory, he admitted it. All right; but you prove an alibi by that little Curran girl, do you? She swore that she saw you at Alabama and Broad at 1:10, and yet here is the paper containing your admission made in the presence of your attorney, Monday morning, April 28th, that you didn't leave the factory until 1:10.

Gentlemen, talk to me about sad spectacles, but of all the sad spectacles that I have witnessed throughout this case,—I don't know who did it, I don't know who's responsible, and I hope that I'll go to my grave in ignorance of who it was that brought this little Curran girl, the daughter of a man

that works for Montag, into this case, to prove this alibi for this red-handed murderer, who killed that little girl to protect his reputation among the people of his own race and religion. Jurors are sworn, and His Honor will charge you, you have got the right to take into consideration the deportment, the manner, the bearing, the reasonableness of what any witness swears to, and if any man in this courthouse, any honest man, seeking to get at the truth, looked at that little girl, her manner, her bearing, her attitude, her actions, her connections with Montag, and don't know that she, like that little Bauer boy, had been riding in Montag's automobile, I am at a loss to understand your mental operations.

But if Frank locked the factory door at ten minutes past one, if that be true, how in the name of goodness did she ever see him at Alabama and Broad at 1:10? Mark you, she had never seen him but one time; had never seen him but one time, and with the people up there on the street, to see the parade, waiting for her companions, this daughter of an employee of Montag comes into this presence and tells you the unreasonable, absurd story, the story that's in contradiction to the story made by Frank, which has been introduced in evidence and will be out with you, that she saw that fellow up there at Jacobs'.

On this time proposition, I want to read you this—it made a wonderful impression on me when I read it—it's the wonderful speech of a wonderful man, a lawyer to whom even such men as Messrs. Arnold and Rosser, as good as the country affords, as good men and as good lawyers as they are, had they stood in his presence, would have pulled off their hats in admiration for his intellect and his character, —I refer to Daniel Webster, and I quote from Webster's great speech in the Knapp case:

Webster on Time Evidence.

"Time is identical, its subdivisions are all alike, no man knows one day from another, or one hour from another, but

by some fact, connected with it. Days and hours are not visible to the senses, nor to be apprehended and distinguished by understanding. He who speaks of the date, the minute and the hour of occurrences with nothing to guide his recollection, speaks at random."

That's put better than I could have put it. That's put tersely, concisely, logically, and it's the truth. Now, what else about this alibi, this chronological table here, moved up and down to save a few minutes? The evidence, as old Sig Montag warned me not to do, twisted, yea, I'll say contorted, warped, in order to sustain this man in his claim of an alibi. For instance, they got it down here "Frank arrived at the factory, according to Holloway, Alonzo Mann, Roy Irby, at 8:25." That's getting it down some, ain't it? Frank says he arrived at 8:30. Old Jim Conley, perjured, lousy and dirty, says that he arrived there at 8:30, and he arrived, carrying a rain coat. And they tried mightily to make it appear that Frank didn't have a rain coat, that he borrowed one from his brother in law, but Mrs. Ursenback says that Frank had one; and if the truth were known, I venture the assertion that the reason Frank borrowed Ursenback's rain coat on Sunday was because, after the murder of this girl on Saturday, he forgot to get the rain coat that old Jim saw him have. Miss Mattie Smith leaves building, you say, at 9:20 A. M. She said,—or Frank says,—at 9:15. You have it on this chart here that's turned to the wall that Frank telephoned Schiff to come to his office at 10 o'clock, and yet this man Frank, coolly, composedly, with his great capacity for figures and data, in his own statement says that he gets to Montags at that hour. And you've got the records, trot them out, if I'm wrong. At 11 A. M. Frank returns to the pencil factory; Holloway and Mann come to the office; Frank dictates mail and acknowledges letters. Frank, in his statement, says 11:05. Any way, oh Lord, any hour, any minute, move them up and move them down, we've got to have the alibi—like old Uncle Remus's rabbit, we're just 'bleeged

to climb. "12:12, approximate time Mary Phagan arrives." Frank says that Mary Phagan arrived ten or fifteen minutes after Miss Hall left; and with mathematical accuracy, you've got Miss Hall leaving the factory at 12:03. Why, I never saw so many watches, so many clocks or so many people who seem to have had their minds centered on time as in this case. Why, if people in real life were really as accurate as you gentlemen seek to have us believe, I tell you this would be a glorious old world, and no person and no train would ever be behind time. It doesn't happen that way, though. But to crown it all, in this table which is now turned to the wall, you have Lemmie Quinn arriving, not on the minute, but, to serve your purposes, from 12:20 to 12:22; but that, gentlemen, conflicts with the evidence of Freeman and the other young lady, who placed Quinn by their evidence, in the factory before that time.

Mr. Arnold: There isn't a word of evidence to that effect; those ladies were there at 11:35 and left at 11:45, Corinthia Hall and Miss Freeman, they left there at 11:45, and it was after they had eaten lunch and about to pay their fare before they ever saw Quinn, at the little cafe, the Busy Bee. He says that they saw Quinn over at the factory before 12, as I understood it.

Mr. Dorsey: Yes, sir, by his evidence.

Mr. Arnold: That's absolutely incorrect, they never saw Quinn there then and never swore they did.

Mr. Dorsey: No, they didn't see him there, I doubt if anybody else saw him there either.

Mr. Arnold Promises to Interrupt.

Mr. Arnold: If a crowd of people here laughs every time we say anything, how are we to hear the Court? He has made a whole lot of little mis-statements, but I let those pass, but I'm going to interrupt him on every substantial one he makes. He says those ladies saw Quinn,—says they say Quinn was there before 12, and

I say he wasn't there, and they didn't say that he was there then.

The Court: What is it you say, Mr. Dorsey?

Mr. Dorsey: I was arguing to the jury the evidence.

The Court: Did you make a statement to that effect?

Mr. Dorsey: I made a statement that those two young ladies say they met Holloway as he left the factory at 11:05—I make the statement that as soon as they got back down to that Greek cafe, Quinn came in and said to them, "I have just been in and seen Mr. Frank."

Mr. Arnold: They never said that, they said they met Holloway at 11:45, they said at the Busy Bee cafe, but they met Quinn at 12:30.

Mr. Dorsey: Well, get your record—you can get a record on almost any phase, this busy Quinn was blowing hot and blowing cold, no man in God's world knows what he did say, but I've got his affidavit there.

Jim Conley is a liar, is he? Jim said Quinn was there, and Jim said Quinn was there before Mary Phagan was there; is that the truth? But Frank, your own man, had a hard time recollecting that Lemmie Quinn was ever there, and Lemmie is entirely too accurate and too precise and had too hard a time making that man there know he was in that factory, and even after he remembered it, Frank wanted to consult his lawyers before Quinn would be authorized to make it public. Emma Freeman and Clark were there before 12 o'clock, and they met old Holloway as he went away, and they didn't stay there any length of time, and they went to the Busy Bee cafe and Lemmie Quinn came in immediately after they got up there and said "I have just been up to see Mr. Frank."

Contradictions of Witnesses.

Is Jim Conley telling the truth or is Jim a liar? You can't blow hot and cold—answer me, is he telling the truth or is

he telling a lie? Jim says Quinn went up the stairs and came down the stairs before this little girl ever got there, and if that be true, why was it this man Frank wanted to consult his lawyers before he could ever say anything about it? I don't doubt you'll find something there that Lemmie Quinn swore, but if you'll hand me that affidavit that Lemmie Quinn swore to—he's the hardest man to pin down on a proposition that ever I saw. That man Quinn is the most anxious man that ever I saw on the stand except old Holloway; he would tell it if Frank said tell it, or keep it quiet if Frank says not to tell—and he wanted to consult his lawyers about it—and you tell me that an honest man, an honest juror, will believe anything like that?

Acts, Not Words Alone.

But, gentlemen, let me read you what a great Judge said, in reference to this statement. Judge Lochrane said, in 43rd Georgia, "I don't take the mere words even, of witnesses, I take their acts." And while I'm on that subject, I want to read you this proposition of law: "Evidence given by a witness has inherent strength, which even a jury cannot under all circumstances disregard; a statement has none." Evidence of a sworn witness, who can be impeached and tried for perjury, has inherent strength, they say, in 101st Ga. 520, which a jury, acting under oath cannot disregard, but a statement has none—I mean, arbitrarily disregard—and the law even goes to the extent of saying you must not impute perjury to people if you can possibly reconcile the evidence without doing so, but in seeking to find the truth and do the right thing, you have got to impute it if it is so irreconcilable that you can't do so.

Mr. Arnold: I have found that evidence, now, Mr. Dorsey, about the time those ladies saw Quinn.

Mr. Dorsey: I'll admit he swore both ways.

Mr. Arnold: No, he didn't, either. I read from the evidence of Miss Corinthia Hall: (Counsel read the portion of the evidence in dispute.) Then Mr. Dorsey asked her, "Then you say you saw Lemmie Quinn right at the Greek cafe at five minutes to twelve, something like that? A—No sir, I don't remember what time it was when I saw him, we went into the cafe, ordered sandwiches and a cup of coffee, drank the coffee and when we were waiting on the change he came in." And further on, "All he said (Quinn) was he had been up and had seen Mr. Frank, that was all he said?" A—"Yes, sir," and so on. Now, the evidence of Quinn: "What sort of clock was that?"—he's telling the time he was at DeFoor's pool parlor—"What sort of clock was that? A—Western Union clock. Q—What did the clock say when you looked at it? A—12:30." And he also swore that he got to the pencil factory at 12:20, that's in a half dozen different places.

The Court: Anything contrary to that record, Mr. Dorsey?

Mr. Dorsey: Yes, sir, I'm going to show it by their own table that didn't concur,—that don't scare anybody and don't change the facts.

Mr. Arnold: Every time he makes a substantial misquotation I'm going to stop him, but not little ones, life is too short to jump him on little ones,—I'd be up all the time.

Mr. Dorsey: Yes, you would,—he isn't going to let anything go by, he's too shrewd and too able and too vigilant and too anxious, don't you be afraid he's going to let anything get by.

Here's this table which is turned to the wall and on which, for your purposes, you have Lemmie Quinn coming up to see this man Frank at from 12:20 P. M. to 12:22 P. M., and in my hand I hold an affidavit made by this pet foreman of the metal department, who seeks to shield and protect his superintendent, in which he says that he got up there to see Frank between 12 and 12:20. And Freeman and Clark say that they had left, that they had met old man Holloway and

old man Holloway says that he left at about a quarter to twelve, and they say that they went up and then they came down, and then went right up to the other corner and right back down, and that Lemmie Quinn was there; and I submit to you as fair men and honest men, if Frank left the pencil factory, as he said in the first statement that he made in the presence of his counsel, Mr. Rosser, at 1:10 o'clock P. M., on April 26th, and then he got home out yonder at 1:20, in the name of goodness, couldn't those girls have walked a block up and a block down in fifteen minutes?

Alibi Table a Fraud.

I know it hurts; but this table here, which is a fraud on its face, puts Lemmie Quinn there from 12:20 to 12:22—no bigger farce in this case than your straining at a gnat, like this, except Doctor Billie Owens' little pantomime with Haas and Fleming and Brent: "Where did you go when you left? Up town. Where? By the National Pencil Company. What time? Between 12 and 12:20"—I haven't got time to take up your time reading all that Lemmie Quinn said—"You don't undertake to be accurate about the time you was there?" And Lemmie Quinn says "I couldn't swear positively." "You can't be definite as to what time you got to that pool room?" And Lemmie Quinn says that he got there between 12:20 and 12:30. Now, if he got to that pool room, several blocks away, at 12:20—and this is Quinn's statement—how could he have gone up in the pencil factory to see Frank at 12:20 to 12:30? But I'll tell you about that, gentlemen, whenever a man gets to swearing too definitely and too specifically about this thing of time, in the language that I just quoted from, as used by Daniel Webster, in the Knapp case, he isn't to be relied upon.

Perjury Charges.

Now, let's pass on to this perjury charge that Mr. Arnold has so flippantly made; let's consider that a little. You saw

these witnesses, you saw their manner, their attitude, their interest,—one of those ladies from the factory over there wanted to die for this man Frank,—she was almost hysterical. When, when, gentlemen, did you ever know of an employee being so enamored of an employer that they were willing to lay down and die, if that friendship was purely platonic? I know enough about human nature to know that this willingness to die, this anxiety to put her neck in a noose that ought to go around this man, was born of something more than just platonic friendship; don't you? Whenever you see a woman willing to lie down and die for a man not related to her, who occupies the relation simply towards her, that of an employer, you may know and you can gamble on it that there is something stronger than ordinary platonic love. It must be a passion born of something beyond the relation that ought to obtain between a married man and a single woman, employer and employee.

Flimsy Story of Bauer Boy.

We have had a remarkable illustration here of all kinds of facts sworn to, if you had asked me if we could have found people in town who could have done it, oh, me, I wouldn't have believed it. Take that little Bauer boy,—the man who before he had that ride with Sig Montag,—the man who was so anxious that nothing be twisted,—and before dinner, before he took that ride in that automobile to the office of Mr. Arnold, where Mr. Rosser was also, he could remember the minutest details, but after dinner, after the automobile ride, after he had looked into the countenance of these able counsel, Lord, me, that boy had a lapse of memory. Old man Sig must have told him about like that old hardshell preacher down in South Georgia said to his congregation, when they had met and prayed for rain, and they prayed and they prayed, and after awhile, as old Sam Jones said, the Good Lord sent them a trash mover, a ground soaker and a gully washer, and when it was about to flood everything and

move everything away, the old hardshell member whose prayers had brought the rain, scratched his chin and said, "Brethren, we have a leetel over-done it;" and so Montag must have whispered into the ears of little Roy Bauer, "Roy, you have a leetle over-done it," and he had, too; and after dinner, he didn't know anything.

But that wasn't all, that little boy remembered exactly where his watch lay—my! my! Talk about perjury,—wilful, deliberate,—and foolish, foolish, foolish, because an honest jury knows it isn't true; don't you? Of course, you do. It would stultify you to say anything else. But that wasn't all. They brought in that machinist Lee, and that fellow Lee was just simply prepared to swear anything, and there wasn't a man on this jury, there wasn't a man within the sound of his voice but what knows that Lee didn't tell the truth; and Lee swore that he had seen in the possession of Schiff, just the other day, a statement that he had signed, and I quizzed him particularly about it, and he said he had seen the paper that he had signed, and forthwith we served them with a subpoena duces tecum to bring it here, and they brought in a paper that hasn't got the mention of his name even on the typewriter.

Perjury of Defense Witnesses.

Now, that's the kind of stuff you've got here, that's the kind of stuff they are unloading on you, and the funny part about it is they expect you to believe it, and not only that, but the idea—and they didn't think we could get Duffy—that that man stood right over that spot with that blood squirting from his finger, and every man, even one from the asylum, knows the first thing he would do would be to grab something and put around it. Standing there; what's the purpose of standing there? Well, this will be out with you. Well, it's the most ridiculous proposition that ever was set up before an honest jury. Talk about fatiguing your indig-

nation! Talk about fatiguing the indignation! Don't it make you sick, such silly tommy-rot? Perjury!

Let's go a step further. I tell you, gentlemen, I never have yet seen a case where women have been suborned as in this case. Why, you take Miss Fleming, the stenographer, put up here to prove one thing and we took her up on an unsuspected line of the investigation,—and she was the stenographer,—and she swore that this man's character was unusually good; she did that. And in her cross examination, "You are just talking about your personal relations with him, I suppose? Yes sir, in general, of course": "General,"—she's got that word "general," and she's talking about her personal relations—oh, we didn't contend that this man tried to seduce or tried to ravish every woman that worked in that factory,—in the first place, all of them wouldn't submit, and he knew who to approach and who not to, except when he approached Mary Phagan, then he was called. "But you don't undertake, of course, to tell what anybody said, you are just telling your own personal experience?" "Yes, what I saw," and that's in keeping with about all the evidence on character they have got here anyhow. "What you saw of him yourself? A.—Yes, sir."

Poster Forbidding Flirting.

Now, so much for that. I submit that isn't worth a cent, and that's in keeping with it all. Now, she was the stenographer,—"Did he stay in the office all the time or circulate around?" A.—"No, he went to different parts of the factory." "Did he come in contact with the help throughout the factory?" "To a certain extent he did, he was the superintendent." "There was a great deal of flirting went on at this window, wasn't there?" "I never did see any." They never asked her whether she ever heard about it. "I didn't see any and I don't know whether it did or not." "They tried to put a stop to it?" "I never heard about it." "Didn't he write posters and notes and put them up, about flirting?" "I didn't

see any of them." "What time did you get off Saturday afternoon?" "I was supposed to get off at one o'clock." "On holidays what time did you get off?" "I got off all holidays, I never worked there on holidays at all. The factory people were supposed to leave at 12 o'clock on Saturdays." "Did the other office and clerical force get off at the same time you did or not?" "I think they worked in the afternoon"—"Not what you think; did you enter up on the order book, and what did Frank do?" "He did general office work like the rest. This is in the morning when I was there." "What do you mean by general office work?" "I don't say that—don't say he did general office work—but I saw him in the morning." "Doing what?" "Making out the financial sheet."

Working at Financial Sheet.

The stenographer put up to prove his character says, first, she only knows what this man did to her and in her presence, and when questioned about the financial sheet, the stenographer, Miss Fleming, most capable of knowing exactly what work really did occur on Saturdays before she left at one o'clock, says Frank's business was to make out the financial sheet. "I saw him making out the financial sheet." "You saw him at that, did you?" "Yes, sir." "Now, you are sure you did that?" "Yes sir." "You are positive he did that?" "Yes sir, he did it always before twelve or one o'clock, in the morning."

Then Mr. Arnold says, "He didn't have time to do that Saturday morning," and she caught it, lit on it like a duck on a June bug and said "No, he didn't have time Saturday morning." She had already said in the very words I have read you that that was his Saturday morning work. Mr. Arnold was so nervous that he couldn't let me continue the examination and he interpolated, "He didn't have time to do that Saturday morning"—a thing that was unfair,—and she was telling the truth when she said—I've got it here in black and white—"I saw him making out the financial sheet Saturday

before I left there at one o'clock." "You saw him at that, did you?" "Yes sir." "Now, you are sure he did that?" "Yes sir." "You are positive he did that?" "Yes sir;" and then Mr. Arnold comes in with his suggestion, and she takes the bait and runs under the bank—he saw how it cut. Then I came back at her again,—now, just to show how she turned turtle, "You did see Frank working Saturday morning on the financial sheet?" "No, he didn't work on the financial sheet." "Why did you state a moment ago you saw him working on it?" "No sir, I didn't."

My Lord! Gentlemen, are you going to take that kind of stuff? I know she is a woman, and I'd hesitate except I had the paper here in my hands to make this charge but if you as honest men are going to let the people of Georgia and Fulton County and of Atlanta suffer one of its innocent girls to go to her death at the hands of a man like this and then turn him loose on such evidence as this, then I say it's time to quit going through the farce of summoning a jury to try him. If I had the standing, the ability and the power of either Messrs. Arnold or Rosser, to ring that into your ears and drive it home, you would almost write a verdict of guilty before you left your box.

Much Easier to Convict Negro.

Perjury! Perjury! When did old John Starnes and Pat Campbell, from the Emerald Isle, or Rosser ever fall so low that, when they could convict a negro,—easy, because he wouldn't have Arnold and Rosser, but just my friend Bill Smith. And for what reason do they want to let Jim go and go after this man Frank? Why didn't they take Newt Lee? Why didn't they take Gantt? The best reason in the world is that they had only cob-webs, cob-webs, weak and flimsy circumstances against those men, and the circum-

stances were inconsistent with the theory of guilt and consistent with some other hypothesis.

But as to this man, you have got cables, strong, so strong that even the ability, the combined ability of the erudite Arnold and the dynamic Rosser couldn't break them or disturb them.

Circumstantial evidence is just as good as any other kind, when it's the right kind. It's a poor case of circumstantial evidence against Newt Lee; it's no case against that long-legged Gantt from the hills of Cobb. But against this man, oh, a perfect, a perfect case. And you stood up here and dealt in generalities as to perjury and corruption; it isn't worth a cent unless you put your finger on the specific instances, and here it is in black and white, committed in the presence of this jury, after she had already said that he wrote the financial sheet Saturday morning, and at your suggestion, she turned around and swore to the contrary.

Yet my friend Schiff says,—no, I take that back—Schiff says, with the stenographer gone, with Frank behind in his work, that he went home and slept all day, and didn't get up what he called the "dahta"—well, he's a Joe Darter, that's what Schiff is. It never happened, it never happened, with that financial sheet that Saturday morning, but if it did, it wouldn't prove anything. He may have the nerve of an Oscar Wilde, he may have been cool, when nobody was there to accuse him, and it isn't at all improbable, if he didn't have the "dahta" in the morning, for him to have sat there and deliberately written that financial sheet.

But do you believe it? No. Do you tell me that this man Frank, when the factory closed at twelve o'clock Saturdays, with as charming a wife as he possesses, with baseball,—the college graduate, the head of the B'nai 'Brith, the man who loved to play cards and mix with friends, would spend his Saturday afternoons using this "dahta" that Schiff got up for him, when he could do it Saturday morning? No sir. Miss Fleming told the truth up until that time,—"I didn't

stay there very often on Saturday afternoon;" Miss Fleming didn't stay there all afternoon.

Financial Sheet Saturday Morning.

Now, gentlemen, I submit this man made that financial sheet Saturday morning. I'm not going to give you my reasons why I contend that, because it is unnecessary; but if he did it Saturday afternoon, and Schiff hadn't gotten up his "dahta," he did it thinking then of an alibi; and don't you tell me that he didn't do it Saturday afternoon because the penmanship don't betray nervousness,—an expert like him, with nobody to accuse him, if he could go home and in the bosom of his family so deport himself after that atrocious crime as not to be observed by his family, if that be true, he could have fixed up that financial sheet Saturday afternoon, but he wouldn't have done it without Schiff having furnished the data if he hadn't been suspecting an accusation of murdering that little girl. A man of Frank's type could easily have fixed that financial sheet,—a thing he did fifty-two times a year for five or six years,—and could have betrayed no nervousness, he might easily,—as he did when he wrote for the police,—in the handwriting, a thing that he was accustomed to do,—even in the presence of the police—you'll have it out with you—he may have written so as not to betray his nervousness.

Friend Wouldn't Identify Writing.

And speaking about perjury: There's a writing that his mother said anybody who knew his writing ought to be able to identify and yet, that man you put up there to prove Frank's writing, was so afraid that he would do this man some injury, that he wouldn't identify the writing that his mother says that anybody that knows it at all, could recognize. I grant you that he didn't betray nervousness, probably, in the bosom of his family; I grant you that he could

fix up a financial sheet that he had been fixing up fifty-two times a year for five or six years and not betray nervousness; I grant you that he could unlock the safe, a thing that he did every day for three hundred and sixty-five days in the year, without betraying nervousness; but when he went to run the elevator, when he went to nail up the door, when he talked to the police, when he rode to the station, then he showed nervousness.

Beattie Joked, Too.

But he could sit in a hall and read and joke about the baseball umpire, but his frivolity, that annoyed the people Saturday night that they had the card game, was the same kind of frivolity that Beattie betrayed when he stood at the automobile that contained the blood of his wife that he had shot. And certainly it is before this jury that he went in laughing and joking and trying to read a story that resulted only in annoyance to the people that were in that card game.

But whether or not he made out that financial sheet, I'll tell you something that he did do Saturday afternoon, when he was waiting up there for old Jim to come back to burn that body, I'll tell you something that he did do,—and don't forget the envelope and don't forget the way that that paper was folded, either, don't forget it: Listen to this: "I trust this finds you and dear tont (that's the German for aunt) well after arriving safe in New York. I hope you found all the dear ones well, in Brooklyn."

Letter to Uncle.

Didn't have any wealthy people in Brooklyn, eh? This uncle of his was mighty near Brooklyn, the very time old Jim says he looked up and said "I have wealthy people in Brooklyn." And I would really like to know, I would like to see how much that brother in law that runs that cigar business has invested in that store, and how much he has got.

The very letter that you wrote on Saturday, the 26th, shows that you anticipated that this old gentleman, whom everybody says has got money, was then, you supposed, in Brooklyn, because here you say that "I hope you have found all the dear ones well"—but I'm coming back to what Frank said to old Jim—"and I await a letter from you telling me how you found things there in Brooklyn. Lucile and I are well."

Now here is a sentence that is pregnant with significance, which bears the ear-marks of the guilty conscience; tremulous as he wrote it? No, he could shut his eyes and write and make up a financial sheet,—he's capable and smart, wonderfully endowed intellectually, but here's a sentence that, if I know human nature and know the conduct of the guilty conscience, and whatever you may say about whether or not he prepared the financial sheet on Saturday morning, here's a document I'll concede was written when he knew that the body of little Mary Phagan, who died for virtue's sake, lay in the dark recesses of that basement. "It is too short a time," he says, "since you left for anything startling to have developed down here." Too short! Too short! Startling! But "Too short a time," and that itself shows that the dastardly deed was done in an incredibly short time. And do you tell me, honest men, fair men, courageous men, true Georgians seeking to do your duty, that that phrase, penned by that man to his uncle on Saturday afternoon, didn't come from a conscience that was its own accuser? "It is too short a time since you left for anything startling to have developed down here." What do you think of that? And then listen at this,—as if that old gentleman, his uncle, cared anything for this proposition, this old millionaire traveling abroad to Germany for his health, this man from Brooklyn,—an eminent authority says that unusual, unnecessary, unexpected and extravagant expressions are always earmarks of fraud; and do you tell me that this old gentleman, expecting to sail for Europe, the man who wanted the price list and financial sheet, cared anything for those old heroes in gray? And isn't

this sentence itself significant: "Today was yontiff (holiday) here, and the thin gray lines of veterans here braved the rather chilly weather to do honor to their fallen comrades"; and this from Leo M. Frank, the statistician, to the old man, the millionaire, or nearly so, who cared so little about the thin gray line of veterans, but who cared all for how much money had been gotten in by the pencil factory.

Letter Betrays Frank.

"Too short a time for anything startling to have happened down here since you left;" but there was something startling, and it happened within the space of thirty minutes. "There is nothing new in the factory to report." Ah! there was something new, and there was something startling, and the time was not too short. You can take that letter and read it for yourself. You tell me that letter was written in the morning, do you believe it? I tell you that that letter shows on its face that something startling had happened, and that there was something new in the factory, and I tell you that that rich uncle, then supposed to be with his kindred in Brooklyn, didn't care a flip of his finger about the thin gray line of veterans. His people lived in Brooklyn, that's one thing dead sure and certain, and old Jim never would have known it except Leo M. Frank had told him, and they had at least $20,000.00 in cool cash out on interest, and the brother-in-law the owner of a store employing two or three people, and we don't know how many more; and if the uncle wasn't in Brooklyn, he was so near thereto that even Frank himself thought he was there at the very moment he claimed he was there, because he says "you have seen or are with the people in Brooklyn."

Telegraphs to Montag.

All right; let's go a step further. On April 28th, he wired Adolph Montag in care of the Imperial Hotel—listen, now,

to what he says—"You may have read in Atlanta papers of factory girl found dead Sunday morning." In factory? In factory? No, "in cellar." Cellar where? "Cellar of pencil factory." There's where he placed her, there's where he expected her to be found; and the thing welled up in his mind to such an extent that, Monday morning, April 28th, before he had ever been arrested, he wires Montag forestalling what he knew would surely and certainly come unless the Atlanta detectives were corrupted and should suppress it and protect him, as he sought to have Jim Conley do; but be it said to your credit, John Starnes, and be it said to your credit, Pat Campbell, and be it said to your credit, Rosser, and be it said to your credit, Black, you had the manhood and the courage to do your duty and to roll it up to this man, surrounded and protected as he was by wealth and influence, and at that time, ah, listen at this, listen at this, ye men that have been accused of the most dastardly crimes, ye men that have been accused by these attorneys here employed to defend this man, of subornation of perjury, listen to the commendation which Frank himself, at the time he was seeking to have you put a rope around the neck of Newt Lee and around the neck of Gantt, says about you:

"You have read in Atlanta papers of factory girl found dead Sunday morning in cellar of pencil factory. Police will eventually solve it,"—he didn't have any doubt about it—"Police will eventually solve it"—and be it said to their credit, they did,—"Assure my uncle"—he says, Monday morning—"I am all right in case he asks. Our company has case well in hand." "Girl found dead in pencil factory cellar," he says in the telegram, "the police will eventually solve it," he says, before he was arrested, "I am all right, in case my uncle asks," and "our company has the case well in hand."

Honesty of Pinkerton Detective.

Well, maybe he did think that when he got that fellow Scott, that he had it well in hand. I'll tell you, there's an

honest man. If there was a slush fund in this case,—these witnesses here say they don't know anything about it, but if there was a slush fund in this case, Scott could have got it, because, at first, he never heard any words that sounded better to him than when Scott said "we travel arm in arm with the police," that's exactly what Frank wanted them to do at that time, he wanted somebody that would run with Black and Starnes and Rosser, and it sounded good to him, and he said all right. He didn't want him to run anywhere else, because he wanted him to work hand in glove with these men, and he wanted to know what they did and what they said and what they thought. But Haas—and he's nobody's fool—when he saw that they were getting hot on the trail, opened up the conversation with the suggestion that "now you let us have what you get, first," and if Scott had fallen for that suggestion, then there would have been something else. You know it. You tell me that letter and that telegram are not significant? I tell you that this evidence shows, notwithstanding what "Joe Darter" Schiff swore, when he saw the necessity to meet this evidence of Miss Fleming, which Mr. Arnold tried so hard, because he saw the force of it, to turn into another channel, that Frank didn't fix that financial sheet Saturday morning. I say that, with the stenographer gone and Frank behind (and Schiff had never done such a thing before, he had always stuck to him in getting it up before), that what Gantt told you is the truth.

This man, expert, brilliant—talk about this expert accountant, Joel Hunter! Why, he isn't near as smart as this man Frank, to begin on, and besides, the idea of his going up there and taking up those things and trying to institute a comparison as to how long it would take him, even if he had the capacity of Frank—he hasn't got it—to go up there and do those things—why, it's worse than ridiculous.

Frank's Statement Implies Guilt.

And Frank himself wasn't satisfied with all this showing about what he had done, he got up on the stand,—he saw the weakness of his case, and he's as smart as either one of his lawyers, too, let me tell you, and I'll bet you he wrote that statement, too, they may have read it, but he wrote it—Frank realized that he must go over and beyond what the evidence was, and through his statement he sought to lug into this case something that they didn't have any evidence for. Why? Because he knew in his heart that all this talk about the length of time it took to fix that financial sheet was mere buncombe. Then he seeks to put in here through that statement—and if we hadn't stopped him he would have done it—a whole raft of other stuff that Schiff, as willing as he was, as anxious as he was, couldn't stultify himself to such an extent as to tell you that Frank did that work Saturday morning. But if he did write that financial sheet Saturday afternoon, a thing I submit he didn't do,—I'm willing to admit he wrote that letter,—I ask you, as fair men and honest men and disinterested jurors representing the people of this community in seeing that justice is done and that the man who committed that dastardly deed has meted out to him that which he meted out to this poor little girl, if this documentary evidence, these papers, don't have the impress of a guilty man? You know it.

Four Instances of Perjury.

All right; but you say there's perjury. Where is it? I'll tell you another case—I have already referred to it—it's when that man, put up there to identify Frank's writing, failed to identify a writing that Frank's own mother swore that anybody that knew anything about his writing could have identified. There's perjury there when Roy Bauer swore with such minute particularity as to his visits to that factory. There's perjury when this man Lee says that Duffy

held his finger out and just let that blood spurt. But that ain't all. Here's the evidence of Mrs. Carson. Mrs. Carson says she has worked in that factory three years; and Mr. Arnold, in that suave manner of his, without any evidence to support it, not under oath, says "Mrs. Carson, I'll ask you a question I wouldn't ask a younger woman, have you ever at any time around the ladies' dressing room seen any blood spots;" and she said "I certainly have." That's a ridiculous proposition on its face. "Have you seen that on several occasions or not?" "I seen it three or four times"—now, in three years; but now, "Did you ever have any conversation with Jim Conley?" and she says, "Yes, on Tuesday he came around to sweep around my table"—that's exactly where Jim says he was Tuesday morning before this man was arrested; "What floor do you work on?" "Fourth." "What floor do your daughters work on?" "On the fourth." "Did you see him up there Monday morning?" "No sir"—that's Frank. "Tuesday morning?" "I saw him Tuesday morning"—he was up there on the fourth floor after the murder, on Tuesday, "sometime between nine and eleven o'clock." I said, "between nine and eleven, somewhere along there?" "Sometime between nine and eleven thirty." "Now, Jim Conley and Leo M. Frank were both on your floor between the same hours?" "I saw Mr. Frank and I saw Jim Conley." "And you know it because you had a conversation with Mr. Frank, and you had a conversation with Jim Conley?" "Yes, I saw them both." And Conley says—and surely, Conley couldn't have been put up to it by these men, even if they had wanted to suborn perjury—that when Frank came up there Tuesday morning before he was arrested, it was then that he came to him and leaned over and said "Jim, be a good boy," and then Jim, remembering the money and remembering the wealthy people in Brooklyn and the promises that Frank made, says, "Yes, I is."

Tuesday morning, says Mrs. Carson, your witness, Jim Conley and Frank both were on that floor, and Jim was doing exactly what he said he was doing, sweeping. Now, let's

see. This old lady was very much interested. "Now, did you go on the office floor to see that blood"—listen at this—"What blood?" "The blood right there by the dressing room?" "What dressing room, what blood are you talking about?" She had seen it three or four times all over the factory. "On the second floor?" "No sir," she says, "I never did see that spot." "Never saw it at all?" "No, I didn't care to look at nothing like that." "You don't care to look at nothing like that?" A.—"No sir, I don't."

Now, that's Mrs. Carson, the mother of Miss Rebecca, that's what she told you under oath when she was on the stand.

Frank's Protection Eased Conley.

Now, let's see about perjury. Now, mark you, I'm not getting up here and saying this generally, without putting my finger on the specific instances, and I'm not nearly exhausting the record,—you can follow it up,—but I am just picking out a few instances. Here's what Mrs. Small says about Jim Conley reading the newspapers. Well, if Jim had committed that crime and he hadn't felt that he had the power and influence of Leo Frank back of him to protect him, he never would have gone back there to that factory or sat around and read newspapers, and you know it, if you know anything about the character of the negro. Why was he so anxious to get the newspapers? It was because Jim knew some of the facts that he wanted to see, negro-like,—that's what made him so anxious about it. Here Mr. Arnold comes,—"You are a lady that works on the fourth floor, and I'm going to ask you a question that we are going to ask every lady that works on that fourth floor;" and we caught them out on that proposition, too, didn't we? And you don't know right now how many women that worked on that floor were put up and how many weren't. You've got the books and the records and you could have called the names, and you didn't dare do it, and

after you had gone ahead and four-flushed before this jury as to what you were going to do, we picked out Miss Kitchens and brought her here and she corroborated your own witness, Miss Jackson, as to the misconduct of this superintendent, Frank.

Now, let's see what Mrs. Small says—Mrs. Small is the lady that got the raise, you remember, and couldn't tell what date it was, thought it had been about four months ago, she got a five cent raise; about four months ago would make it since this murder, and when I got to quizzing her about it she didn't know when she got the raise, and she's not the only one that got the raise, and it wasn't only in the factory that they raised them, either. Even Minola McKnight got some raise, and after she saw the import of it, "You don't remember the exact date." "No sir, I don't," when she had already placed the date subsequent to this murder; and this woman, Mrs. Small, also corroborates Jim Conley about being up there Tuesday.

Frank Went Up to See Conley.

"Did you see Mr. Frank up there any of those days?" "I saw Mr. Frank up there Tuesday after that time." "What time Tuesday?" "I couldn't tell you, I guess it was between eight and nine o'clock." The other one saw him somewhere between nine and eleven or eleven thirty. This lady, their witness, says that he was up there between eight and nine.

Why was Frank so anxious to go up there on that floor? Why? It was because he wanted to see this man Jim Conley that he thought was going to protect him. Mr. Rosser characterized my suggestion that this man Frank called upon and expected Jim Conley to conceal the crime as a dirty suggestion, and I accept it as absolutely true, and I go a step further, and say it was not only dirty, it was infamous. And he would today sit here in this courthouse and see a jury of honest men put a rope around Jim Conley's neck, the man that was brought into it by him; and he didn't

mean to bring Jim Conley in unless he had to—and he had to. Jim says the first question he asked him when he saw him down there after this dastardly crime had been committed was, "Have you seen anybody go up?" "Yes," says Jim, "I have seen two girls go up but I haven't seen but one come down." And then it was that this man saw the absolute necessity of taking Jim into his confidence, because he knew that Jim was on the lookout for him, and Starnes and Campbell and Black, combined, together, and even if you make a composite intellect and add the brilliance of Messrs. Rosser and Arnold to that of these detectives, could never have fitted that piece of mosiac into the situation; it isn't to be done.

Low Enough to Hang Conley Instead.

"Jim, have you seen anybody go up?" "Yes," said Jim, "I see two girls go up but only one came down." And you told Jim to protect you, and Jim tried to do it, and the suggestion was dirty, and worse than that, it is infamous, to be willing to see Jim Conley hung for a crime that Leo Frank committed.

But I'm coming to that after a while, I haven't got to the State's case yet, I'm just cutting away some of the underbrush that you have tried to plant in this forest of gigantic oaks to smother up their growth, but you can't do it, the facts are too firmly and too deeply rooted. Oh, yes, says Mrs. Small, I saw Frank up there on that fourth floor between eight and nine o'clock Tuesday morning, and the other lady saw him up there between nine and eleven, she wouldn't be sure the day he was arrested—I say arrested, according to Frank's own statement himself, they got him and just detained him, and even then, red-handed murderer as he was, his standing and influence, and the standing and influence of his attorney, somehow or other—and that's the only thing to the discredit of the police department throughout the whole thing, say what you may—they were intimi-

dated and afraid because of the influence that was back of him, to consign him to a cell like they did Lee and Conley, and it took them a little time to arrive at the point where they had the nerve and courage to face the situation and put him where he ought to be.

Honest Efforts of John Black.

Now, I'll tell you another thing, too, if old John Black—and Mr. Rosser didn't get such a great triumph out of him as he would have us believe, either. Black's methods are somewhat like Rosser's methods, and if Black had Rosser where Rosser had Black, or if Black had Rosser down at police station, Black would get Rosser; and if Black had been given an opportunity to go after this man, Leo M. Frank, like he went after that poor defenseless negro, Newt Lee, towards whom you would have directed suspicion, this trial might have been obviated, and a confession might have been obtained. You didn't get your lawyer to sustain you and support you a moment too soon. You called for Darley, and you called for Haas, and you called for Rosser, and you called for Arnold, and it took the combined efforts of all of them to keep up your nerve. You know that I'm telling you the truth, don't you? And I don't want to misquote and I won't misquote, but I want to drive it home with all the power that I possibly can or that I possess. The only thing in this case that can be said to the discredit of the police department of the City of Atlanta is that you treated this man, who snuffed out that little girl's life on the second floor of that pencil factory, with too much consideration, and you let able counsel and the glamour that surrounds wealth and influence, deter you. I honor—I have nothing to do with it—but I honor the way they went after Minola McKnight. I don't know whether they want me to apologize for them or not, but if you think that finding the red-handed murdered of a little girl like this is a ladies' tea party, and that the detectives should have the manners of a dancing master and apol-

ogize and palaver, you don't know anything about the business. You have seen these dogs that hunt the 'possum bark up a tree or in a stump, and when they once get the scent of the 'possum, you can do what you like but they'll bark up that tree and they'll bark in that stump until they run him out, and so with old John Starnes and Campbell. They knew and you know that Albert McKnight would never have told Craven this tale about what he saw and what his wife had told him except for the fact that it be true, and if you had been Starnes, you would have been barking up that tree or barking in that stump until you ran out what you knew was in there. That's all there is to it.

Following Duty of Solicitor.

You have got the writ of habeas corpus that's guaranteed to you, go and get it; and if Mr. Haas had come to me Tuesday morning and said "You direct the police"—on Monday morning, when Frank was taken down into custody, and said to me, "You direct the police to turn this man Frank loose, he's innocent," I would have said "It's none of my business, I run my office, they run their office," and the next time the police department, in an effort to serve the people of this community, take a negro that they know and you know and lock her up or what not, I'll not usurp the functions of the judge of these courts, who can turn her loose on a habeas corpus, and direct them to turn her loose or interfere in any way in their business; I don't run the police department of the City of Atlanta, I run the office of Solicitor General for the term that the people have elected me, and I'm taken to task because I went in at the beginning of this thing and didn't stand back.

I honor Mr. Hill. I am as proud of having succeeded him as I am that I was elected to the position by the people of this community, to the office of Solicitor General, but I have never yet seen the man that I would take as my model or pattern; I follow the dictates of my own conscience. And

if there is one act since I have been Solicitor General of which I am proud, it is the fact that I joined hand and glove with the detectives in the effort to seek the murderer of Mary Phagan, and when your influence poured letters in to the Grand Jury, in an effort to hang an innocent man, negro though he be, that I stood firmly up against it. If that be treason, make the best of it. And if you don't want me to do it, then get somebody else to fill the job, and the quicker you do it the better it will suit me. I will not pattern myself after anybody or anybody's method, not even Mr. Hill, and, bless his old soul, he was grand and great, and I have wished a hundred times that he was here today to make the speech that I'm now making. There wouldn't be hair or hide left on you,—he was as noble as any Roman that ever lived, as courageous as Julius Caesar, and as eloquent as Demosthenes. Such talk as that don't scare me, don't terrify me, don't disturb the serenity of my conscience, which approves of everything that I have done in the prosecution of this man.

Witness Substantiates Conley.

Now, let's come back here and discuss this thing of perjury, let's talk about that a little, let's not get up here and say that everybody is a liar without citing any instances and that they are crack-brain fanatics, let's knuckle down and get specific instances. So this Mrs. Small says she saw Jim Conley,—"Did you see Mr. Frank up there on any of those days?" "I saw Mr. Frank after that crime on Tuesday." "What time Tuesday?" "I couldn't tell you, I guess between eight and nine o'clock, he and Miss Carson were coming up from the back end of the factory (Miss Rebecca, I presume)." "He and Mrs. Carson were coming up from the back end of the factory, and I stepped up in front of him and I said 'Here, Mr. Frank, wait a moment, O. K. this ticket,' he says 'are you going to put me to work as soon as I get here?' and I says 'Yes it's good for your health.' He

O. K.'d the ticket and I went on with my work." So Frank was up there Tuesday morning.

"Now, speaking about Mrs. Carson, how far towards the elevator did Mrs. Carson go with Frank? A.—"Mrs. Carson wasn't up there, it was Miss Carson, Miss Rebecca." The old lady says she was; I said, "Oh, the old lady wasn't up there at all?" "No sir, she wasn't there Tuesday at all." "You saw Miss Rebecca Carson walking up towards the elevator?" "Yes sir." "What was Conley doing?" "Standing there by the elevator." And yet Jim has lied about Frank! Frank was up there twice, Jim was sweeping, Jim was there by the elevator. "At the time you saw Frank, the negro was standing there at the elevator?" "Yes, sir, he wasn't sweeping, he was standing there with his hand on the truck looking around." "Did he see you and Frank?" "I guess he must have seen us." "Where was Conley when he went down the steps?" "Standing in front of the elevator." "How close did Frank pass Conley?" "As close as from here to that table, about four feet." "Conley was still standing there with his hand on that thing, is that true?" "Yes sir."

Couldn't Hear Elevator Far.

"That's exactly like Conley says. And here's another thing: This woman, Mrs. Small, testifies about that elevator,—it shakes the whole building, I said, anybody in the world could tell it if the machinery wasn't running? She says, "No, anybody in the world could tell it if the machinery wasn't running but you can't notice it unless you are close to the elevator." I asked "If there was hammering and knocking, would you still hear the elevator?" She said "You could if you get close to it." Well, of course, you could, nobody disputes that. "If the elevator was up here, and you were back in the rear and there was hammering and knocking going on, you couldn't?" "No sir." And that disposes of that point, that's the truth on that.

Now, Mrs. Carson had already sworn here positively that she didn't go down to see that blood, hasn't she? There were too many of these people over there at the factory who had seen that blood,—that blood that at first wasn't blood, it was paint, and then wasn't paint but was cat's blood or blood from somebody that was injured, and then wasn't fresh blood but was stale blood—too many of them had seen it. "On Wednesday I had no business back there, I was there one day but can't remember." "What did you go back there for?" "A crowd of us went at noon to see if we could see any blood spots." "Were you successful?" "No sir." "Who went with you?" And lo and behold, Mrs. Carson, the mother of Rebecca, had already stated that she didn't go about it, the very first person that this Mrs. Small refers to—"Well, Mrs. Carson." "Mrs. Carson went with you," I said. "Yes sir, she saw the places where the blood was said to be." "You know she was there, you are pretty sure she was there?" Mrs. Small said "Yes sir." "It looked like what?" "Looked like powder." "How much of it down there?" "A small amount, just a little, looked like some of the girls had been powdering their face and spilled powder." You know better than that. I came back to the subject, "What makes you say Mrs. Carson went down there with you?" Answer. —"Because curiosity sent us down there." "Did curiosity send her down there too?" "We went back afterwards."

Now, gentlemen, somebody swore,—and I put it up to you, too,—somebody committed perjury! "You were going back yourself and went to get her?" "Yes sir." "She didn't make any objection to going down, did she?" "No sir." "Don't you know she didn't go?" "I know," she says, "that she did."

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Instances, Not Generalities.

All right; if this case is founded on perjury, it's the kettle calling the pot black, and I haven't dealt in glittering generalities, I have set forth specific cases. But that isn't

intended to be exhaustive, that's a mere summary of a few of these instances, they are too numerous to mention. The truth is that there is no phase of this case, where evidence was needed to bolster it up that somebody hasn't come in, you say, willingly and without pay, because, you say there is no slush fund back of this case. Now, let's pass on here a little bit.

They tried mighty hard to break down this man Albert McKnight with Minola—and I believe I'll leave that for a little later and come now to this statement of Frank's. Gentlemen, I wish I could travel faster over this. I'm doing the very best I can, I have a difficult task and I wish I didn't have it to do at all.

Notes Incriminate Frank.

Now, gentlemen, I want to discuss briefly right here these letters, and if these letters weren't "the order of an all-ruling Providence I should agree with my friends that they are the silliest pieces of stuff ever practiced; but these letters have intrinsic marks of a knowledge of this transaction," these pads, that pad,—things usually found in his office,—this man Frank, by the language of these notes, in attempting to fasten the crime upon another, "has indelibly fixed it upon himself." I repeat it, these notes, which were intended to fix the crime upon another, "have indelibly fixed it upon this defendant," Leo M. Frank. The pad, the paper, the fact that he wanted a note,—you tell me that ever a negro lived on the face of the earth who, after having killed and robbed, or ravished and murdered a girl down in that dark basement, or down there in that area, would have taken up the time to have written these notes, and written them on a scratch pad which is a thing that usually stays in the office, or written them on paper like this, found right outside of the office of Frank, as shown on that diagram, which is introduced in evidence and which you will have out with you? You tell me that that man, Jim Conley, sober, as Tillander and Graham

tell you, when they went there, would have ravished this girl with a knowledge of the fact that Frank was in that house? I tell you no. Do you tell me that this man, Jim Conley, "drunk as a fiddler's bitch," if you want it that way, would, or could have taken time to have written these notes to put beside the body of that dead girl? I tell you no, and you don't need me to tell you, you know it. The fact, gentlemen of the jury, that these notes were written—ah, but you say that it's foolish. You say it's foolish? It's ridiculous. It was a silly piece of business, it was a great folly; but murder will out, and Providence direct things in a mysterious way, and not only that, as Judge Bleckley says, "Crime, whenever committed, is a mistake in itself; and what kind of logic is it that will say that a man committed a crime, which is a great big mistake, and then, in an effort to cover it up, won't make a smaller mistake?" There's no logic in that position. The man who commits a crime makes a mistake, and the man who seeks to cover it up nearly always makes also a little mistake. And this man here, by these notes purporting to have been written by little Mary Phagan, by the verbiage and the language and the context, in trying to fasten it on another, as sure as you are sitting in this jury box "has indelibly fastened it on himself." These gentlemen saw the significance of the difference between Scott's evidence, when he was before the Coroner,—and he wasn't quizzed there particularly about it,—"I told her no," and "I told her I didn't know"; to tell that little girl "No," would have given her no excuse, according to their way of thinking, to go back to see whether that metal had come or not, but to tell her "I didn't know," would lure her back into the snare where she met her death. And your own detective, Scott, says, after he gave the thing mature deliberation, that this man on the Monday evening,—and he was so anxious about getting a detective that he had that man Schiff telephone three times, three times, three times,—remember that,—so anxious was he. Scott says, after thinking over the matter, that Leo M. Frank told that girl that he didn't know whether the

metal had come or not, and she went back there to see about the metal, and he followed her back there. Mr. Arnold saw it.

Conley Would Have Written "Done It."

I'll tell you another thing, that old Starnes and Campbell and Rosser, and even Newport Lanford, if he had been called in, and even if I had been called in, to save my life, could not have known that the very word that Leo M. Frank used, according to Jim Conley when Conley says Frank told him "I'm going to chat with a girl," would have been used exactly four times, as I'll show you when I come to read this statement by Leo M. Frank, for he chatted, and he chatted, and he chatted, and he chatted, according to his own statement. This letter that I hold in my hand says that this negro "did it." Old Jim Conley in his statement here, which I hold in my hand, every time he opened his mouth says "I done it." Old Jim Conley, if he had written these notes, never would have said "this negro did it by his self," but Frank wanted it understood that the man that did do it, "did it by his self." Jim Conley says that Frank says he wanted to chat, and four times in this statement before they suspended to go out and let you refresh yourself, this man Frank had said that somebody came in the office "to chat," and Mr. Arnold, in making his argument to the jury, realized, because he is as keen and as smart as they ever get to be, the force of that word and endeavored to parry the blow which I now seek to give this defendant.

Necessity of Moving to Basement.

And you tell me that old Jim Conley, after he had robbed and murdered, or after he had ravished and murdered this girl, when he would have had no occasion in the world to have cared whether her dead body was found right there at that chute, was such a fool as to take the time to take her body

way back there in the basement and hide it behind the corner of that room? I tell you that it never occurred. That body was taken down there and put in the place where it was. Why? Because she was murdered on the second floor, where the blood spots are found, and because Leo M. Frank, the superintendent of the plant, saw and felt the necessity that that girl's body should not be found on the second floor of the pencil factory, but, to use the language which he put in the letter or telegram which he sent to Adolph Montag in New York, "in the cellar." My! My! "That negro fireman down here did this."

Now, let's see how many times Jim says "done it": "I locked the door like he done told me, I remembers that because the man what was with the baby looked at me like he thought I done it." That's when they ran into the man that Jim says looked at him like he thought "I done it." It's the difference between ignorance and education, and these notes that you had that man prepare in your office on this paper that stayed on that floor and on that pad that came from your office, bear the marks of your diction, and Starnes and Campbell, with all their ingenuity, couldn't have anticipated that old Jim would get up here and state that "this man looked at me when he ran into that baby, like I done it"; and couldn't have made him say "I locked the door like he done told me"; and couldn't have said "I went on and walked up to Mr. Frank and told him that girl was done dead, he done just like this and said sh-h-h." I could go on with other instances.

He Said He Was Going to Chat With Her.

And there's your word "chat," "chat," "chat," "chat," four times, I'm going to read it to you, it's here in black and white, and you can't get around it. This girl went down there in that scuttle hole? Listen at this,—you didn't want to say that she went back there to see about the metal, but you

knew that the ladies' water closet was back there, and you make this poor girl say "I went to make water," "I went to make water, he pushed me down that hole, a long, tall, black negro"—"long, slim, tall, negro, I write while he play with me." And this note says "that long, tall, black negro did it by his self." Make water? Where did she go to make water? Right back there in the same direction that she would have gone to see about the metal. You tell me, except Providentially, that that would have crept in here? You tell me that old Jim Conley, negro, after he had struck that girl with that big stick,—which is a plant as sure as you are living here and as sure as Newt Lee's shirt was a plant,—you tell me that negro felt any inducement or necessity for leaving that girl's form anywhere except where he hit her and knocked her down? You tell me that he had the ingenuity, —and mark you, Starnes and these other men weren't there then to dictate and map out,—you tell me that he would write a note that she went back to make water when there's no place and her usual place was up there on the second floor?

Notes Are Powerful Argument.

I tell you, gentlemen of the jury, that a smarter man than Starnes, or a smarter man than Campbell, a smarter man than Black, a smarter man than Rosser, in the person of Leo M. Frank, felt impelled to put there these letters, which he thought would exculpate him, but which incriminate and damn him in the minds of every man seeking to get at the truth. Yet you tell me there's nothing in circumstantial evidence, when here's a pad and there's the pad and there's the notes, which you must admit, or which you don't deny, old Jim Conley wrote, because you say in your statement you had got numerous notes from him, and yet, the very day, at the police station, according to your own statement, when you wrote that, you saw the original of these, and you didn't open your mouth, you didn't say a word, you didn't direct the finger of suspicion against this man Jim Conley, who

had been infamously directed to keep quiet to protect you. Things don't happen that way, gentlemen, and you know it. There isn't an honest man on that jury, unbiased, unprejudiced, seeking to get at the truth, but what knows that these letters,—silly? Yes, silly, except you see the hand of Providence in it all—that don't know that the language and the context and the material out of which they are written were written for the protection of Leo M. Frank, the superintendent of this factory, who wired Montag to tell his uncle "if my uncle inquires about me state that I am all right, the police have the thing well in hand and will eventually solve the problem," and the girl was found dead, not in the factory, but in the cellar. The man who wrote the note, "nothing startling has happened in so short a time," wrote it with a knowledge and conscious of the fact that this poor girl's life had been snuffed out even at the time he penned the words.

You'll have this out with you, you look at them, if you can get anything else out of them you do it, and as honest men, I don't want you to convict this man unless you are satisfied of his guilt beyond a reasonable doubt, but don't let that doubt be the doubt of a crank, don't let it be the doubt of a man who has conjured it up simply to acquit a friend, or a man that has been the friend of a friend; let it be the doubt of an honest, conscientious, upright juror, the noblest work of Almighty God.

Frank's Statement.

Now this statement. I tell you, gentlemen of the jury, that when this statement is scanned, it isn't susceptible of but one construction, and that is, that it is the statement of a guilty man, made to fit in these general circumstances, as they would have you believe—these gentlemen here harped a great deal, gentlemen of the jury, "are you going to convict him on this, are you going to convict him on that." It isn't the law that circumstantial evidence is inferior to direct and

positive evidence, and it is correct to instruct the jury that there is nothing in the nature of circumstantial evidence that renders it less reliable than other classes of evidence. The illustration that they would seek, gentlemen of the jury, not by direct language did they do it in their argument to you, because we had already read them this authority, but they would bring up this isolated fact and that isolated fact and they would say "are you going to convict him on that?" I don't ask your conviction on that. Two illustrations, first, each of the incidental facts surrounding the main fact in issue, is a link in a chain, and that the chain is not stronger than its weakest link, this authority says is generally rejected as an incorrect metaphor and liable to misconstruction. The second illustration and the one that is approved is, each of the incidental facts surrounding the main facts in issue are compared to the strands in a rope, where none of them may be sufficient in itself, but all taken together may be strong enough to establish the guilt of the accused beyond a reasonable doubt.

Strands Form Mighty Cable.

And so they took isolated instance after isolated instance and then said "are you going to convict him on that?" I say no. But I do say that these instances each constitute a chain, or a cord,—a strand in a cable, and that, when you get them all, all together, you have a cable that ought to hang anybody. That's the proposition. Not on this isolated instance or that one, but upon all, taken together and bound together, which make a cable as strong as it is possible for the ingenuity of man to weave around anybody.

Now, listen at this statement and let's analyze that as we go on a little. I don't know whether this man's statement to the jury will rank along with the cross examination of that celebrated pervert, Oscar Wilde, or not, but it was a brilliant statement, when unanalyzed, and if you just simply shut your eyes and mind to reason and take this statement,

then, of course, you are not going to convict. But listen to what our Courts say about these statements—I have already read it to you, but I want to read it again. "Evidence given by a witness has inherent strength which even a jury cannot under all circumstances disregard; a statement has none." No cross examination, no oath, merely a statement adoitly prepared to meet the exigencies of the case.

Flaws in Frank's Statement.

Now, listen at this. This man Frank says "I sat in my office checking over the amount of money which had been left over"—not the cash, not cash, but the amount of money which had been left over—"from the pay-roll"—from the $1,100.00 that they had drawn Friday, and to this day, we don't know how much was left over, and we don't know whether what was left over coupled with the cash left on hand would make this bundle of bills that old Jim says was shown to him and taken back, when Frank wanted to get him to go down into that dark cellar and burn that body by himself, and old Jim says "I'll go if you go, but if I go down there and burn that body, somebody might come along and catch me and then what kind of a fix will I be in?" And I'll tell you right now, if Jim Conley had gone down in that cellar and have undertaken to have burned that body, as sure as the smoke would have curled upward out of that funnel towards Heaven, just so certain would Leo M. Frank have been down there with these same detectives, and Jim Conley would have been without a shadow of a defense. But old Jim, drunk or sober, ignorant or smart, vile or pure, had too much sense, and while he was willing to write the notes to be put by the dead body, and was willing to help this man take the body from the second floor, where the blood was found, into the basement and keep his mouth shut and to protect him, until the combined efforts of Scott and Black and Starnes and all these detectives beat him down and made him admit a little now and a little then, he wasn't willing,

and he had too much sense, to go down into that basement to do that dirty job by himself and cremate the remains of this little girl that that man in his passionate lust had put to death. You don't show that he didn't have the money, and the truth of the business is, I expect, that out of that $1,-100.00 for the pay-roll, and $30.00 in cash which you had, if the truth were known, you offered old Jim Conley and bought him with that $200.00 just as surely as Judas Iscariot implanted the kiss for the thirty shekels.

Reserved Mary Phagan's Pay.

He says that "No one came into my office who asked for a pay envelope or for the pay envelope of another." This running-mate and friend of the dead girl tells you under oath that she went there on Friday evening when they were paid, with the knowledge that little Mary wasn't there, and as she had done on previous occasions, sought to get the money to take to her. And I'll show you when I get to the State's case later on that this diabolical plot, of which you have made so much fun, is founded in reason and really did exist, and that this man really, goaded on by passion, had been expecting some time before to ultimately, not murder this little girl, but cause her to yield to his blandishments and deflower her without her resistance. Let me do it right now.

Proof That He Knew Mary.

Way back yonder in March, as far back as March, little Willie Turner, an ignorant country boy, saw Frank trying to force his attentions on this little girl in the metal room; he is unimpeached, he is unimpeachable. She backed off and told him she must go to her work, and Frank said "I am superintendent of this factory,"—a species of coercion—"and I want to talk to you." You tell me that that little girl that worked up there and upon the same floor with you in the metal department, and you had passed right by her machine,

this pretty, attractive little girl, twelve months, and a man of your brilliant parts didn't even know her, and do you tell me that you had made up the pay-roll with Schiff fifty-two times during the year that Mary Phagan was there and still you didn't know her name or number? You tell me that this little country boy who comes from Oak Grove, near Sandy Springs in the northern part of this county, was lying when he got on that stand? I'll tell you no. Do you tell me that little Dewey Hewell, a little girl now from the Home of the Good Shepherd in Cincinnati, who used to work at the National Pencil Company, who probably has lost her virtue though she is of such tender years, was lying when she tells you that she heard him talking to her frequently,—talked to Mary frequently, placed his hands on her shoulder and called her Mary?" You tell me that that long-legged man, Gantt, the man you tried to direct suspicion towards, the man Schiff was so anxious to have arrested that he accompanied the police, that you said in your telegram to your uncle, had the case in hand and would eventually solve the mystery,—do you tell me that Gantt has lied when he tells you that this man Frank noticed that he knew little Mary and said to him, "I see that you know Mary pretty well?"

I am prepared to believe, knowing this man's character as shown by this evidence, that way back yonder in March, old passion had seized him. Yesterday Mr. Rosser quoted from Burns, and said it's human to err; and I quote you from the same poem, in which old Burns says that "there's no telling what a man will do when he has the lassie, when convenience snug, and he has a treacherous, passionate inclination." There's no telling what he will do when he's normal, there's no telling what he will do when he's like other men, but, oh! gentlemen, there's no telling what a pervert will do when he's goaded on by the unusual, extraordinary passion that goaded on this man, Leo M. Frank, when he saw his opportunity with this little girl in that pencil factory, when she went back to find out if the metal had come.

Claimed He Didn't Know Her.

You tell me that all of these people have lied,—Willie Turner has lied? Dewey Hewell has lied? That Gantt has lied? That Miss Ruth Robinson has lied? And even Frank, in his statement, admits that he knew Mary well enough to know that Gantt was familiar with her, because Chief Detective Harry Scott was told on Monday, April 28th, that this man Gantt was familiar with little Mary. And yet you expect an honest jury of twelve men—although out of your own mouth you told these detectives, whom you wired your uncle would eventually solve the problem, you told them that this man Gantt was so familiar with her that you directed suspicion towards him. How did you know it if you didn't know little Mary? And in addition, as I have stated, you tell me that this brilliant man had helped to make out the pay-roll for fifty-two times and seen little Mary's name there, and he didn't even know her name and had to go and get his book to tell whether she worked there or not? And I wouldn't be at all surprised, gentlemen of the jury—it's your man Frank's own statement,—that shortages occurred in the cash even after this man Gantt left,—I wouldn't be at all surprised if the truth of the business is that this man coveted that little girl away back yonder in March, I wouldn't be at all surprised, gentlemen, and, indeed, I submit that it's the truth, that every one of these girls has told the truth when they swore to you on the stand that back yonder in March, after this little girl had come down to work on the office floor in the metal department, that they observed this man, Leo M. Frank, making advances towards her and using his position as superintendent to force her to talk with him. I wouldn't be at all surprised if he didn't hang around, I wouldn't be at all surprised if he didn't try to get little Mary to yield. I wouldn't be surprised if he didn't look upon this man Gantt, who was raised on an adjoining farm in Cobb County, as an obstacle to the accomplishment of the evil pur-

pose which he had in hand, and I wouldn't be at all surprised if, instead of discharging Gantt for a one dollar shortage, which Gantt says "I'll give up my job rather than pay," that you put him out of that factory because you thought he stood in the way of the consummation of your diabolical and evil plans.

Laying Snare for Mary

And you say that you and Schiff made up the pay-roll Friday, and I wouldn't be at all surprised that, after little Mary had gone and while you and Schiff were making up the pay-roll Friday afternoon, you saw little Mary's name and you knew that she hadn't been notified to come there and get her money Friday afternoon at six o'clock, and then, as early as three o'clock,—yes, as early as three,—knowing that this little girl would probably come there Saturday at twelve, at the usual hour, to get her pay, you went up and arranged with this man Jim Conley to look out for you,—this man Jim Conley, who had looked out for you on other occasions, who had lockedthe door and unlocked it while you carried on your immoral practices in that factory,—yes, at three o'clock, when you and Schiff were so busy working on the pay-roll, I dare say you went up there and told Jim that you wanted him to come back Saturday but you didn't want Darley to know that he was there. And I wouldn't be at all surprised if it were not true that this little Helen Ferguson, the friend of Mary Phagan, who had often gotten Mary's pay envelope before, when she went in and asked you to let her have that pay envelope, if you didn't refuse because you had already arranged with Jim to be there, and you expected to make the final onslaught on this girl, in order to deflower and ruin her and make her, this poor little factory girl, subservient to your purposes.

Mary Falls in Trap.

Ah, gentlemen, then Saturday comes, Saturday comes, and

it's a reasonable tale that old Jim tells you, and old Jim says "I done it,"—not "I did it," but "I done it" just exactly like this brilliant factory superintendent told him. There's your plot. I'll tell you, you know this thing passion is like fraud, —it's subtle, it moves in mysterious ways; people don't know what lurks in the mind of a libertine, or how anxious they are, or how far ahead they look, and it isn't at all improbable, indeed, I submit to you as honest men seeking to get at the truth, that this man, whose character was put in issue and torn down, who refused to go into specific instances on cross examination, if he didn't contemplate this little girl's ruin and damnation it was because he was infatuated with her and didn't have the power to control that ungovernable passion. There's your plot; and it fits right in and jams right up, and you can twist and turn and wabble as much as you want to, but out of your own mouth, when you told your detective, Scott, that this man Gantt was familiar with that little girl, notwithstanding at other places in this statement you tried to lead this jury of honest men to believe you didn't know her—I tell you that he did know her, and you know that he knew her.

What are you going to believe? Has this little Ferguson girl lied? Is this little factory girl a hair-brained fanatic suborned to come up here and perjure herself, by John Starnes or Black or Campbell or any of these detectives? Do you tell me that such a thing can be done, when the State of Georgia, under the law hasn't a nickel that this girl could get? I tell you, gentlemen, you know that's a charge that can't stand one instant.

Conley Quoted Him Right.

Now, he says right here in his statement that he kept the key to his cash box right there in his desk. Well, he makes a very beautiful statement about these slips—but I'll pass that and come to that later. He explains why they were put on there April 28th, and so forth. Now, here's the first refer-

ence that he makes to "chatting": "I stopped that work that I was doing that day and went to the outer office and CHATTED with Mr. Darley and Mr. Campbell." "I should figure about 9:15, or a quarter to nine, Miss Mattie Smith came in and asked for her pay envelope." Jim is corroborated there, he identified Miss Mattie Smith and told with particularity what she did. He says, "I kept my cash box in the lower drawer of the left hand side of my desk." Jim says that's where he got some cash. This man also shows he took a drink at Cruickshank's soda fount and two or three times during this statement he showed that he was doing at the soda fount exactly as Jim says he was doing as they came on back from the factory. Again he says, "but I know there was several of them and I went on CHATTING with Mr. Montag." I told you I was going to read you this, and I just wanted you to know you were going to have this out with you. Another thing he says, "I moved the papers I brought back from Montag's in the folder;" old Jim says he had the folder and put the folder away; "I would look and see how far along the reports were which I used in getting my financial statement up every Saturday afternoon, and, to my surprise, I found the sheet which contains the record of pencils packed for the week didn't include the report for Thursday, the day the fiscal week ended, that's the only part of the data that Schiff hadn't got up." "A short time after they left my office, two gentlemen came in, one of them Mr. Graham"—Mr. Graham says that he talked to this negro down stairs; the negro told him the way to the office, and they tried to get around it on the idea there's some difference in color. Well, being in jail, gentlemen, changes the complexion of anybody. That man was there, Graham says, Tillander says, and he was there for what purpose? By whose request? And he wasn't drunk, either. And then he says "I gave the required pay envelope to the two fathers," this man Frank says, "I gave the pay envelope and CHATTED with them at some length."

Mr. Arnold says these darkeys pick up the language and

manners of the men by whom they are employed. I tell you that, if Frank didn't come in contact with the people that worked in that factory more than he would lead you to believe, old Jim Conley never had the opportunity to pick up words that he uses; and yet here old Jim says, and even in his statement, even in his statement, this man uses the very language that Jim puts in his mouth. I just picked out four of them, in a very few pages, I don't know how many others there are.

"Afterwards Found Her to Be Mary Phagan."

"Miss Hall finished her work and started to leave when the twelve o'clock whistle blew." Whistle blowing on a holiday? Well, maybe it did, I'll leave that for you to say. Another place he says "I chatted with them:" "Entering, I found quite a number of people, among them Darley," etc. "I chatted with them a few minutes,"—using the same words Jim said he used with reference to this girl: "Miss Hall left my office on her way home; there were in the building at the time, Arthur White and Harry Denham and Arthur White's wife, on the top floor; to the best of my knowledge, it must have been ten or fifteen minutes after Miss Hall left my office when this little girl, whom I afterwards found to be Mary Phagan, entered my office and asked for her pay envelope." "This little girl whom I afterwards found"—why didn't you give her her money? No, he didn't give her her money; he knew her all right. That child never got her money, she never got her money, and this man Frank, when Mrs. White came down there at 12:35, and when he jumped and when Jim Conley was still sitting down stairs,—the one fact in this case that must make you see that Jim Conley didn't do the deed,—this man Frank was at that safe then, when he jumped and Mrs. White came up, getting out the pay envelope of this little girl, who had gone back to the rear to see whether the metal had come or not—not to make water, as he stated in that note. At the time Frank was at

that safe and Mrs. White came in, she says he jumped. Remember that. As she went down the stairs at 12:35 she saw Jim Conley, or a negro who resembled him, and that's the one incident in this case that shows that old Jim Conley didn't do the deed. Then it was after this man had tipped up and tipped back,—then it was, he had to let Mrs. White go up. Previously he had sent up and had them to come down, but this time he lets Mrs. White go up, and then after Mrs. White had been up there a little while, and in order not to get caught in the act of moving that body, because he knew Mrs. White might come down, he knew that these men had their lunches and would work and stay up on that floor; at 12:50, Mrs. White says when she went down she saw Conley there, at 12:50, and Frank was anxious to get Mrs. White out of the building, in order that he might call Jim Conley, if Jim had seen, and his saying that he had seen would have given him away; then it was that he wanted to get her out of the building, and he sent her up-stairs and then went up-stairs to get her out and pretended to be in a big hurry to get out, but according to her evidence, instead of going out, he didn't have on his coat and went back in his office and sat down at his desk. Anxious to get out,—going to close up right now! Now, that wasn't the purpose.

Blow Didn't Cause Much Blood.

Talk about no blood being found back down there? Talk about no blood being found? Well, there's two reasons why there wasn't any found: This lick the girl got on the back of the head down there wasn't sufficient to have caused any great amount of blood, and if old Jim Conley hadn't dropped that girl as he went by the dressing room and the thing hadn't gone out like a sunburst all around there, like these men describe it, there wouldn't have been any blood. When you assaulted her and you hit her and she fell and she was unconscious, you gagged her with that, and then quickly you tipped up to the front, where you knew there was a cord,

and you got the cord and in order to save this reputation which you had among the members of the B'nai B'rith, in order to save, not your character because you never had it, but in order to save the reputation with the Haases and the Montags and the members of Doctor Marx's church and the members of the B'nai B'rith and your kinfolks in Brooklyn, rich and poor, and in Athens, then it was that you got the cord and fixed the little girl whom you had assaulted, who wouldn't yield to your proposals, to save your reputation, because dead people tell no tales, dead people can't talk. And you talk about George Kendley saying that he would be one to lead a riot, and you talk about your ability to run George Kendley with a fan or a corn shuck. I tell you Frank knew and you know that there would have been men who would have sprung up in this town, had that little girl lived to tell the tale of that brutal assault, that would have run over ten thousand men like you, would have stormed the jail or done anything. It oughtn't to be, because that thing ought to be left to be threshed out before an upright Court and an honest jury.

Lynch Law

Her Resistance Brought Death.

But this man Frank knew,—he didn't expect her to turn him down, he paved the way, he had set the snare and he thought that this poor little girl would yield to his importunities, but, ah! thank God, she was made of that kind of stuff to which you are a stranger, and she resisted, she wouldn't yield, you couldn't control your passion and you struck her and you ravished her, she was unconscious, you gagged her and you choked her. Then you got Mrs. White out, the woman that saw you jump at 12:35 when you were there fixing to see about little Mary's pay envelope, which you never did give the poor child. And you fussed a good deal about that pocket book, that mesh bag; I wouldn't be at all surprised if old Jim's statement that Frank had that mesh bag, didn't keep that mesh bag from turning up in this

Mrs. White 12:35

trial, just exactly like that plant of old Newt Lee's shirt and just exactly like that club and just exactly like these spots these men found on May 15th around that scuttle hole. It worried you too much, it worried you too much, it disconcerted your plans. The thing had already been done when Mrs. White got back there at 12:35 and old Jim Conley was still sitting down there waiting patiently for the signal that had been agreed upon, waiting patiently for the signals that you had used when some other women from the fourth floor and other people had been down there to meet you Saturdays and holidays. And the first thing he did after he had gagged her with a piece of her underskirt, torn from her own underskirt, was to tip up to the front, where he knew the cords hung, and come back down there and choke that poor little child to death. You tell me that she wasn't ravished? I ask you to look at the blood—you tell me that that little child wasn't ravished? I ask you to look at the drawers, that were torn, I ask you to look at the blood on the drawers, I ask you to look at the thing that held up the stockings. Oh, no, there was no spermatazoan and there was no semen, that's true; but as sure as you are born, that man is not like other men. He saw this girl, he coveted her; others without her stamina and her character had yielded to his lust, but she denied him, and when she did, not being like other men, he struck her, he gagged her, he choked her; and then able counsel go through the farce of showing that he had no marks on his person! Durant didn't have any marks on his person, either. He didn't give her time to put marks on his person, but in his shirt sleeves, goaded on by an uncontrollable passion, this little girl gave up her life in defense of that which is dearer than life, and you know it.

Absurd Argument of Paint.

Why this man says he had an impression of a female voice saying something. How unjust! This little girl had evidently—listen at that, gentlemen, this little girl whose name

had appeared on the pay-roll, had evidently worked in the metal department, and never was such a farce enacted in the courthouse as this effort on the part of able counsel to make it appear that that wasn't blood up there on that floor. Absurd! Not satisfied with the absurdity of the contention that it's paint, that it's cat's blood, rat's blood, varnish, they bring in this fellow Lee, who perjures himself to say that that man stood there just letting the blood drip. Old man Starnes tells you that they saw the blood there and chipped it up, and saw the blood right along on the route towards the elevator; Jim Conley tells you that right there is where he dropped the head so hard, and where Frank came and took hold and caught the feet.

Every person that described that blood and its appearance bears it out that it was caused by dropping, because it was spattered,—one big spot here and other little ones around it,—and if human testimony is to be believed, you know that was blood—that that was blood and not paint, you know that it was the blood of Mary Phagan and not the blood of Duffy. Duffy says so. You know that it was the blood of Mary Phagan because it corresponds with the manner in which Jim Conley says he dropped the body. You know it's blood because Chief Beavers saw blood there. It spattered towards the dressing room; you know it was blood because Starnes says he saw it was blood and he saw that the haskoline had been put over it,—and I'm going to read you this man's statement, too, unless I give out physically, about this haskoline, it's the purest subterfuge that ever a man sought to palm off on an honest jury.

More Blood Near Elevator.

Starnes tells you that "I found more blood fifty feet nearer the elevator on a nail." Barrett,—Christopher Columbus Barrett, if you will, that discovered the hair that was identified, I believe, by Magnolia Kennedy, Monday morning, as soon as they began work, before anybody ever

had had time to write a reward,—Barrett, who was not caught in a single lie, Barrett, who though he works for the National Pencil Company, had the manhood to stand up—I trust him and put him up against this man Holloway, who says that Jim Conley was his nigger. This man Holloway, who made a statement to me in my office, when he didn't see the purpose and the import and the force of the suggestion that this elevator key, after the elevator box was locked, was always put in Frank's office, but when it became apparent that too many people saw this man Frank Sunday morning go there and turn the lever in the power box, without going to his office to get the key, then it was that this man Holloway, who we put up and for whose veracity we vouched and who betrayed us and entrapped us, after he saw the force of the suggestion, after he had told us that always, without exception, he had locked this elevator box himself and put the key in Frank's office, throws us down and by his own affidavit as read in your presence here, made at a time when he didn't see the importance of the proposition, changed his evidence and perjured himself either to have this jury acquit this guilty defendant, his boss and employer, or to get the reward for the conviction of "his nigger," Jim Conley.

Contrast his with Barrett,—Barrett, the man who discovered the hair on his machine early in the morning and whose attention was called to this blood there by the dressing room at a time when no reward is shown to have been offered and indeed, when you know that no reward was offered because no executive of this State or of this City offered any reward during Sunday or as early as seven or eight o'clock Monday morning. I say to you that this man Barrett stands an oasis in a mighty desert, standing up for truth and right and telling it, though his own job is at stake, and you know it. And you may fling your charges of perjury just as far as you want to, but I tell you right now, gentlemen, that Barrett, when he swore that he found blood there at the place where Conley said he dropped the

body, told the truth; and when he said he found that hair on that machine, I tell you Barrett told the truth, and if there be a man in this town that rightly deserves and who ought to receive the rewards, if there are any, it's this poor employee of the National Pencil Company, who had the manhood and the courage to tell the truth, and I hope if there be such a thing as a reward to be given to anybody, that this man Barrett gets it. But not a single thing did Barrett swear but that either didn't occur before any rewards were offered, or that weren't substantiated by four and five of the most reputable witnesses that could be found. And Barrett didn't make his discoveries May 15th, either, Barrett made them Monday morning, April 28th, and they haven't any resemblance to a plant. They come so clean and so natural that the most warped and the most biased must recognize the fact that Barrett has told the truth, the whole truth and nothing but the truth.

Others Saw Blood, Too.

But you can wipe Barrett out of this case and still you have got an abundance of firm ground upon which to stand. Barrett isn't shown to have lied, dodged or equivocated. Mrs. Jefferson,—and I'm only going to give you a few of the people that saw blood there—Mrs. Jefferson saw dark red spot about as large as a fan, and in her opinion, it was blood, and it was blood. Mel Stanford says he saw the blood at the dressing room Monday, dark spots that looked exactly like blood and this white stuff, haskoline, had been smeared over it. "It was not there Friday, I know," said Mel Stanford, "because I swept the floor Friday at that place. The white substance appeared to have been swept over with a coarse broom; we have such a broom, but the one used by me Friday in sweeping over that identical spot was of finer straw; the spots **were** dry and the dark led right up here within five feet of where the smear was." Blood and haskoline.

Jim Conley saw her go up and didn't see her go down. Necessary, absolutely necessary, that this man should put her where he said in his telegram or letter the body was found. The discovery made Monday by Barrett and Jefferson and Mel Stanford and seen by Beavers and Starnes, but not only that, but reinforced by Darley, for Darley says "I saw what appeared to be blood spots at the dressing room, a white substance had been smeared over it, as if to hide it." And Quinn says "The spots I saw at or near the dressing room looked like blood to me."

Sometimes you have got to go into the enemy's camp to get ammunition. It's a mighty dangerous proposition,—Doctor Connally knows what a dangerous proposition it is to go into the enemy's camp to get ammunition, he has been an old soldier and he will tell you that there is no more dangerous proposition,—I expect Mr. Mangum knows something about it, this going into the enemy's camp to get ammunition; and yet in this case, conscious of the fact that we were right, having Darley tied up with an affidavit, we dared to go right into the enemy's camp, and there we got the best evidence of the fact that Frank was more nervous than he had ever been known to be except on two occasions, one when he had seen a little child killed, and the other when he and his boss had had a falling out—this man Montag, who was so afraid something was going to be twisted in this case —and also Darley saw the blood. It was a mighty hard pill for Darley, it was an awful hard situation for him, but we drove it up to him and he dared not go back on the affidavit which he had signed, though he did modify his statements.

Blood Wasn't There Friday.

All right; I'm not going to call over all these other people,—Mrs. Small and others,—though Mrs. Carson denied it, she went there,—who claimed to have seen that blood. But to cap it all, Mel Stanford says "I swept the floor,"—he's an employee and he's an honest man,—"it wasn't there

Friday." Why? Because old Jim, when he went to move that body, put it there Saturday. To cap it all, Doctor Claud Smith, the City Bacteriologist, says "I analyzed it and I tell you that I found blood corpuscles." And now you come in with the proposition that that blood had been there ever since that machinist Lee saw that fellow Duffy stand there with his finger cut and let it spout out at the end,—a thing Duffy says never happened, and you know never happened, and we called on you to produce the paper this man Lee said he signed and you can't do it, because he never signed one. Not only that, but your own employee, your own witness, Mary Pirks, your own witness, Joel Fuss, your own witness Magnolia Kennedy, your own witness Wade Campbell, and your own witness Schiff and others whose names are too numerous to take up your valuable time to mention, all say that they saw this great big spot there covered over with something white, which we know to have been hasko-line.

Stains at Scuttle Hole a "Plant."

Now, Harry Scott didn't manipulate exactly right, so they got them some new Richmonds and put them in the field, and this fellow Pierce,—and where is Pierce? Echo answers where? And where, oh, where, is Whitfield? And echo answers where? The only man you bring in here is this man McWorth. Starnes denies, Black denies, Scott denies, every witness put on the stand denies, that around that scuttle hole anything was seen immediately after that murder. Don't you know that Frank, who went through that factory,—that Schiff, Darley, Holloway, don't you know that they would have been only too glad to have reported to Frank that blood spots had been found around that scuttle hole, and don't you know that Frank would have rushed to get his detective Scott to put the police in charge of the information that blood had been found here? But long after Jim Conley had been arrested, after this man

Holloway had arrested him, after this man Holloway had said that Jim was "his nigger," realizing the desperation of the situation, realizing that something had to be forthcoming to bolster up the charge that Conley did it, then it was and not until then that this man McWorth, after he had gone looking through the factory for a whole day, at about 3:30 o'clock saw seven large stains, found the envelope and stick right there in the corner.

Now, he found too much, didn't he? Wasn't that a little too much? Is there a man on this jury that believes that all these officers looking as they did there, through that factory, going down in this basement there through that very scuttle hole, would have overlooked seven large stains which were not found there until May 15th? Scott said "I looked there just after the murder, made search at the scuttle hole, didn't see blood spots there." Starnes says the same, Rosser says the same, and these men Mel Stanford and Darley both say they had been cleaning up all that very area May 3rd, and yet the men who cleaned up and all these men never saw them and never even found the envelope or the stick. Why it's just in keeping with that plant of the shirt at Newt Lee's house. I don't care how much you mix this man Black. Boots Rogers says, Darley says, that Sunday morning, when suspicion pointed towards this man Newt Lee, that this man Frank, the brilliant Cornell graduate and the man who was so capable at making figures that certain parts of his work have never been fixed since he left that factory, when he knew a girl had been murdered down stairs, when he knew that suspicion pointed towards Newt Lee, took that slip out of the clock and stood there, looked at it, told those men, in answer to a question, if Newt Lee would have had time to have left and gone home after he killed that girl and changed his clothing, that old Newt didn't have the time.

Threw Suspicion on Newt Lee.

Why did he say it then? Because he knew that Lanford

and Black and the other detectives who were there would have examined that slip for themselves, then and there, and would have seen that these punches were regular or irregular. But he stood there, and because he knew he would be detected if he tried to palm off a fraud at that time and place, this man of keen perception, this man who is quick at figures, this Cornell graduate of high standing, looks over those figures which register the punches for simply twelve hours,—not quite twelve hours,—in that presence, surrounded by those men, told them that Newt Lee wouldn't have had the time; but, ah! Monday afternoon, when he sees that there isn't enough evidence against Newt Lee, and that the thing ain't working quite as nicely against this man Gantt, who he told was familiar with this little girl, Mary Phagan, and then he suddenly proposes, after a conference with his astute counsel, Mr. Haas, that "you go out to my house and make a search," and then, in the same breath and at the same time, he shrewdly and adroitly suggests to Black that Newt Lee, he has suddenly discovered, had time to go out to his house, and forthwith, early Tuesday morning, John Black, not having been there before because Leo M. Frank told him that Newt Lee didn't have time to go out to his house, but after the information comes in then Tuesday morning, John Black puts out and goes to old Newt's house and finds a shirt; that's a plant as sure as the enevelope is a plant, as the stick is a plant, as the spots around the scuttle hole. And the man that did his job, did it too well; he gets a shirt that has the odor of blood, but one that has none of the scent of the negro Newt Lee in the armpit. He puts it, not on one side, as any man moving a body would necessarily have done, but he smears it on both sides, and this carries with it, as you as honest men must know, unmistakable evidence of the fact that somebody planted that shirt sometime Monday, at whose instance and suggestion we don't know.

Club and Shirt Both "Plants."

And that club business: Doctor Harris says that that wound could not have been done with that club, and Doctor Hurt says it could not have been done with that club, and not a doctor of all the numerous doctors, good men and good doctors as they are for some purposes, ever denies it. A physical examination of that shirt shows you that it wasn't on the person when that blood got on it,—there is as much blood on the inside or the under side that didn't come through to the outside. Lee didn't deny the shirt, but he never did say that it was his shirt. Cornered up as he was, not a negro, one negro in a thousand, that wouldn't have denied the ownership of that shirt, but old Lee was too honest to say that it wasn't his shirt,—he didn't remember it; and you don't know whether it was his or not.

Now this envelope and this stick is found at the radiator, at the scuttle hole, May 15th, after the place had been cleaned up, according to Darley and other witnesses, including Mel Stanford, and after, as I said, it had been thoroughly searched by Scott, Campbell, Rosser, Starnes and I don't know how many others; and then you say that these things weren't a part and parcel of the same scheme that caused this man to have Conley write those notes planted by the body to draw attention away from him. Gentlemen, you can't get away from the fact that blood was there, you can't do it; now, can you? Just as honest men, now, honest men can you get away from that? If human testimony is to be believed, you've got to recognize the fact that blood was on the second floor, and that there was no blood at the scuttle hole; that the shirt and the club and the spots were plants.

"She had left the plant five minutes when Lemmie Quinn, the foreman of that plant, came in and told me I couldn't keep him away from the factory even though it was a holiday, at which time I smiled and kept on working." Smiled and kept on working! "I wanted to know when they would have lunch, I got my house and Minola answered the phone

and she answered me back that she would have lunch immediately and for me to come right away. I then gathered my papers together and went upstairs to see the boys on the top floor; this must have been, since I just looked at my watch, ten minutes to one. Mrs. White states it was 12:35, that she passed by and saw me, that's possibly true, I have no recollection about it, perhaps her recollection is better than mine." She remembered it very well.

McKnight Watched From Kitchen.

Now, this Minola McKnight business. Isn't it strange that this man Albert, her husband, would go up there and tell that kind of a tale if there wasn't some truth in it? Isn't it strange that Minola herself, in the tale that they seek to have you believe was a lie, should have been sustained by Mrs. Selig, when she tells you "Yes, I gave her $5.00 to go get some change," and Mrs. Frank gave her a hat? Do you believe that this husband of hers didn't see that man Frank when, after this murder, he went home and was anxious to see how he looked in the glass, but as the people had gone to the opera, anxious to get back to keep his engagement with Jim Conley? And all this talk about Mrs. Selig, about this thing not having been changed. Gentlemen, are you just going to swallow that kind of stuff without using your knowledge of human nature? And you tried to mix old Albert up, and right here, I'm going to read you a little bit about Albert's evidence: "Yes sir, he came in close to 1:30, I guess, something like that." "Did he or not eat anything?" "No sir, not at that time, he didn't, he came in and went to the sideboard in the dining room and stood there a few minutes, then he goes out and catches the car." "How long did he stay at the house?" "I suppose he stayed there five or ten minutes." "About five or ten minutes?" "About five or ten minutes." "What did he do at the sideboard?" "I didn't see him do anything at the sideboard." "Isn't there a door between the cook room and the

dining room?" These gentlemen asked him, and Albert said, "Yes, this here dining room was open;" yes, they didn't keep it shut all the time, said Albert. "And you know he didn't eat anything in that dining room?" "Yes, I know he didn't eat."

Told Truth to Craven.

And this is the tale that had been told Craven by the husband of Minola McKnight, and Minola went down there and in the presence of her counsel, stated these things to these officers and she never would have done it if it hadn't been the truth. Gordon was down there, and he could have said—and if he hadn't said it then he's unworthy of the name of lawyer—"Minola, if these things aren't true, don't you put your name to it, if you do you are liable to go to the penitentiary for false swearing; if you don't, the writ of habeas corpus is guaranteed to every man, and in less than two hours, by an order of a judge of the Superior Court I'll have you out of here." And yet, George Gordon, with his knowledge of the law, with his knowledge of his client's rights, sits there and lets Minola McKnight, the cook, who is sustained in the statement that she then made but which here in this presence she repudiated, corroborated by her husband and sustained in many particulars by the Seligs themselves,—George Gordon sat there and let her put her fist to that paper, swearing to a lie that might send her to the penitentiary, and he was her lawyer and could have released her from that prison by a writ of habeas corpus as quick as he could have gotten to a judge, because any judge that fails to hear a writ of habeas corpus immediately, is subject to damages and impeachment.

Couldn't Break Down McKnight Evidence.

But Craven was there and Albert was there and this woman, McKnight, sitting there in the presence of her lawyer, this man that was so eager to inject into this case something

that these men wanted in here all the time, but never could get until he got on that stand and swore that I had said a thing that you saw by the questions that I asked him never did occur, that I was afraid that I would get in bad with the detectives—I would get in bad with them if I would try to run their business, and I never will get in bad with them because I never expect to undertake to run their business; I've got as much as I can say grace over to attend to my own business. And you go out there, now, and bring in Julius Fisher and a photographer, and all these people, and try to prove this negro Albert McKnight lied, and by the mere movement of that sideboard, which Mrs. Selig in her evidence says, even, every time they swept it was put just exactly back in the same place,—then you try to break down Albert McKnight's evidence with that. Why, gentlemen, Albert says that that sideboard had been moved, and you know it had been moved, and Albert McKnight stood, not where these gentlemen sought to put him, but at a place where he could see this man Frank, who came home, there sometime, as Albert says, between one and two o'clock, after he had murdered the girl, and didn't eat his dinner, but hurried back to the factory to keep his engagement with Jim Conley, who had promised to come back and burn her body in the furnace.

Minola Sustained Her Husband.

You tell me that Albert would have told that lie? You tell me that Albert's wife, in the presence of Albert and Craven and Pickett, honorable, upright men, who worked for the Beck & Gregg Company, the same firm that Albert McKnight works at,—and do you tell me that George Gordon, a man who poses as an attorney, who wants to protect the rights of his client, as he would have you see, sat there in that presence and allowed this woman, for her husband, to put her fist to a paper and swear to it which would consign her to the penitentiary? I tell you that that thing never happened, and the reason Minola McKnight made that affidavit, corroborat-

ing this man, her husband, Albert, sustained as she is by the Seligs, biased and prejudiced and willing to protect their son-in-law as they were, is because it was the embodiment of the truth and nothing but the truth; and as honest, unprejudiced, unbiased men, you know it.

And you know he didn't eat anything in that dining room, yes, I know he didn't eat. "Don't you know you can't sit in that dining room," says Mr. Arnold, "and don't you know you can't see from the kitchen into the dining room, you know that, don't you?" "Yes sir, you certainly can see"; and the very evidence of the photographs and Julius Fisher and others who came here, after that sideboard had been moved, sustains Albert McKnight, and shows that once that sideboard is adjusted, you could see, as Albert says, and he did see because he would have never told that tale unless he had been there and seen it. "You can see in there?" "Yes sir, you can see; look in the mirror in the corner and see all over that dining room"; that's what Albert swore. And if there's anybody in the world that knows how to get up a plan to see from the kitchen into the dining room or to hear what's going on among the white folks in the dining room, it's a negro. And Albert told too straight a tale, he told too reasonable a tale. "Don't you know that you can't look in the mirror in the corner and see it?" Albert says "I did do it, I stayed there about five or ten minutes while he was there and looked in that mirror at him, Mr. Frank." "You stayed there in that kitchen on that occasion and looked in the mirror at him that five or ten minutes he stayed there?" "Yes sir." "By looking in that mirror you can see what's going on in that room?" "You can see if they are eating at the table." "Don't you know that you can't see in that room by looking into that mirror?" "Yes sir, you can see in there." "You can see all over the room?"—tried to make him say that—"No, not all over it exactly." "But you can see even when they are eating at the table?" "You can look in that mirror and see in the sitting room and through that dining room," said Albert, "to a certain extent." And he says he never

was in the dining room in his life. That's reasonable. "You were right side of the back door of the kitchen?" "Yes sir." "Let me give you a little drawing; now were you sitting right in front of that little hallway between the two rooms, in front of it?" Says Albert, "Not exactly." "You were sitting right here against the wall, weren't you?" And he said "Yes sir." "I don't know whether it's fair or not,—that's a fair statement?" And Albert says, "I don't know whether it's fair or not, but I know I saw Leo M. Frank come in there some time between one and two o'clock Saturday, April 26th, and I know he didn't stay but about ten minutes and left to go to town." And he tells you the way in which he left, and Frank in his statement says that, while he didn't get on that car, he went in such a direction as Albert McKnight might have naturally supposed he went down there. "Minola she went in there but stayed only a minute or two in the dining room, I never looked at the clock." "You don't know exactly what time?" "No, but I know it was obliged to have been something after one when Mr. Frank came there and he came in and went before the sideboard and then went back to town." And he says "I don't know exactly whether he did or not because I have never been in the house no further than the cook room." Then he says "Who did you tell?" "I told Mr. Craven." "Who is Mr. Craven?" "He is the boss at the plow department at the Beck & Gregg Hardware Company"; and that's the way the detectives got hold of it, and try all you will to break old Albert down, I submit to you, gentlemen, that he has told the absolute truth and stands unimpeached.

(At this point, a recess was taken until Monday, August 25, 1913, at 9 A. M.)

Monday, August 25th, 1913, 9:00 A. M.

May it please Your Honor and Gentlemen of the Jury:

I regretted more than you the necessity for your being carried over another week or, rather, another Sunday. I was even more exhausted than I anticipated, and this morning

my throat and voice are in such shape that I fear I will not be able to do the case the justice that it demands. I thought myself, had we not had the adjournment that I might have been able to finish my speech and His Honor charge you Saturday afternoon but I am sure such would not have been the case.

Analysis of Frank's Statement.

When we closed on Saturday, I was just completing a brief analysis of the statement made by this defendant. I'm not going into any exhaustive analysis of that statement, because it is not necessary to further inconvenience you and I haven't the physical strength, but there is certain language and certain statements and assertions made in this statement by this defendant which merit some consideration. This defendant stated to you, after His Honor had excluded our evidence and properly, I think, that his wife visited him at the police station. He says that she was there almost in hysterics, having been brought there by her father and two brothers-in-law and Rabbi Marx—no, "Rabbi Marx was with me, I consulted with him as to the advisability of allowing my dear wife to come up to the top floor to see those surroundings, city detectives, reporters and snap-shotters." He doesn't prove that by a living soul and relies merely upon his own statement. If they could have proven it by Rabbi Marx, who was there and advised him, why didn't they do it? Do you tell me that there lives a true wife, conscious of her husband's innocence, that wouldn't have gone through snapshotters, reporters and everything else, to have seen him—

Tilt Between Attorneys.

Mr. Arnold: I must object to as unfair and outrageous an argument as that, that his wife didn't go there through any consciousness of guilt on his part. I have sat here and heard the unfairest argument I have ever

heard, and I can't object to it, but I do object to his making any allusion to the failure of the wife to go and see him; it's unfair, it isn't the way to treat a man on trial for his life.

The Court: Is there any evidence to that effect?

Mr. Dorsey: Here is the statement I have read.

Mr. Arnold: I object to his drawing any conclusions from his wife going or not going, one way or the other, it's an outrage upon law and decency and fairness.

The Court: Whatever was in the evidence or the statement I must allow it.

Mr. Dorsey: "Let the galled jade wince"—

Mr. Arnold: I object to that, I'm not a "galled jade," and I've got a right to object. I'm not galled at all, and that statement is entirely uncalled for.

The Court: He has got the right to interrupt you.

Mr. Dorsey: You've had your speech—

Mr. Rosser: And we never had any such dirty speech as that, either.

Mr. Dorsey: I object to his remark, Your Honor, I have a right to argue this case—

Mr. Rosser: I said that remark he made about Mr. Arnold, and Your Honor said it was correct; I'm not criticizing his speech, I don't care about that.

Why Didn't Wife Go to Him?

Frank said that his wife never went back there because she was afraid that the snapshotters would get her picture—because she didn't want to go through the line of snapshotters. I tell you, gentlemen of the jury, that there never lived a woman, conscious of the rectitude and innocence of her husband, who wouldn't have gone to him through snapshotters, reporters and over the advice of any Rabbi under the sun. And you know it. Frank says in his statement with reference to these notes written by Conley, "I said I know he can write." How long did it take him to say it, if he ever

said it? "I received many notes from him asking me to loan him money, I have received too many notes from him not to know that he can write." In other words, says Frank, in his statement, I have received notes signed with his name, purporting to have been written by him, and he says they were written by a pencil. Frank says he said "I told them if you will look in the drawer in the safe you will find the card of a jeweler from whom Conley bought a watch on the instalment plan." He corroborates Conley there, with reference to the watch incident and what occurred there in his office when Conley told him not to take any more money out. "Now, perhaps if you go to that jeweler you may find some sort of receipt that Conley had to give and be able to prove that Conley can write." Scott says that no such thing ever happened. But if Frank knew so well that this man Conley could write, in the name of fairness why didn't Frank, when he saw those notes at the Police Station, found beside this dead body, then and there say "this is the writing of James Conley?" Why didn't he do it? Scott denies that any such thing happened, or that they came into possession of any information from Frank that led to knowledge on their part that this man Conley could write. And up to the time that they discovered that this man Conley could write, this man had kept his mouth sealed and it was only the knowledge on the part of the detectives and the knowledge on the part of Conley that the detectives knew he was lying about his ability to write, that forced him to make the first admission that he was connected with this crime. He says he knew that that Conley could write. Why, then, did he keep his mouth shut until the detectives discovered it, when he knew that the notes found beside that poor girl's body was the one key that was going to unlock the Phagan mystery?

Knew Conley Could Write.

You know why. Ah, you did know that Conley could write. You knew it, not only because he wrote the notes for

you, through which you sought to place the responsibility for this crime on another man, but you knew it because he checked up the boxes of pencils, and he had written you numerous notes to get money from you, just like he borrowed money from those other people in that factory. You knew that the most powerful fact that could be brought to light showing who committed this dastardly crime was to find who penned the notes placed with the body; and yet, although you saw them, according to your own statement, at Police Headquarters and saw them there the very Sunday morning that the crime was committed, not a word, not a word, although the notes themselves said that the crime was done by a negro. It is not necessary to discuss that further.

Frank says, with reference to this visit of Conley to the factory, after Conley had gone through over yonder and demonstrated in detail, as told you by Branch, and in the same length of time and almost to the minute that Conley himself says it took, too, though Conley only knows the clock registered four minutes to one and don't know anything about the balance of the time, he says, with reference to the visit of Conley to the jail, when Conley wanted to confront him, "I told them if they got the permission, I told them through my friend Mr. Klein, that if they got the permission of Mr. Rosser to come, I would speak to them, would speak to Conley and face him or anything they wanted, if they got the permission of Mr. Rosser. Mr. Rosser was on that day up at Tallulah Falls trying a case." But Mr. Rosser got back, didn't he? Mr. Rosser didn't remain at Tallulah Falls.

Frank Woudn't Confront Conley.

I tell you, gentlemen of the jury, measuring my words as I utter them, and if you have got sense enough to get out of a shower of rain you know it's true, that never in the history of the Anglo-Saxon race, never in the history of the African race in America, never in the history of any other race, did an ignorant, filthy negro, accuse a white man of a crime and

that man decline to face him. And there never lived within the State of Georgia, a lawyer with one-half the ability of Mr. Luther Rosser, who possessed a consciousness of his client's innocence, that wouldn't have said "Let this ignorant negro confront my innocent client." If there be a negro who accuses me of a crime of which I am innocent, I tell you, and you know it's true, I'm going to confront him, even before my attorney, no matter who he is, returns from Tallulah Falls, and if not then, I tell you just as soon as that attorney does return, I'm going to see that that negro is brought into my presence and permitted to set forth his accusations. You make much here of the fact that you didn't know what this man Conley was going to say when he got on the stand. You could have known it, but you dared not do it.

Mr. Rosser: May it please the Court, that's an untrue statement; at that time, when he proposed to go through that dirty farce, with a dirty negro, with a crowd of policemen, confronting this man, he made his first statement,—his last statement, he said, and these addendas nobody ever dreamed of them, and Frank had no chance to meet them; that's the truth. You ought to tell the truth, if a man is involved for his life; that's the truth.

Mr. Dorsey: It don't make any difference about your addendas, and you may get up here just as much as you want to, but I'm going to put it right up to this jury—

Mr. Rosser: May it please the Court, have I got the right to interrupt him when he mis-states the facts?

The Court: Whenever he goes outside of the record.

Mr. Rosser: Has he got the right to comment that I haven't exercised my reasonable rights?

The Court: No sir, not if he has done that.

Mr. Rosser: Nobody has got a right to comment on the fact that I have made a reasonable objection.

Mr. Dorsey: But I'm inside of the record, and you

know it, and the jury knows it. I said, may it please Your Honor, that this man Frank declined to be confronted by this man Conley.

Mr. Rosser: That isn't what I objected to; he said that at that meeting that was proposed by Conley, as he says, but really proposed by the detectives, when I was out of the city, that if that had been met, I would have known Conley's statement, and that's not true; I would not have been any wiser about his statement than I was here the other day.

The Court: You can comment upon the fact that he refused to meet Frank or Frank refused to meet him, and at the time he did it, he was out of the city.

Mr. Arnold: We did object to that evidence, Your Honor, but Your Honor let that in.

The Court: I know; go on.

Mr. Dorsey: They see the force of it.

Mr. Rosser: Is that a fair comment, Your Honor, if I make a reasonable objection, to say that we see the force of it?

The Court: I don't think that, in reply to your objection, is a fair statement.

Mr. Dorsey: Now, may it please Your Honor, if they don't see the force of it, you do—

Mr. Rosser: I want to know, is Your Honor's ruling to be absolutely disregarded like that?

The Court: Mr. Dorsey, stay inside of the record, and quit commenting on what they say and do.

Mr. Dorsey: I am inside of the record, and Your Honor knows that's an entirely proper comment.

Mr. Rosser: Your Honor rules—he says one thing and then says Your Honor knows better—

Mr. Dorsey: Your Honor knows I have got a right to comment on the conduct of this defendant.

The Court: Of course, you have, but when they get up to object, I don't think you have any right to com-

ment on their objections as they are making them to the Court.

Mr. Dorsey: I don't?

The Court: No, I don't think so.

Mr. Dorsey: Isn't everything that occurs in the presence of the Court the subject matter for comment?

The Court: No, I don't think you can comment on these things. You can comment on any conduct within the province of this trial, but if he makes an objection that's sustained, why, then, you can't comment on that.

Mr. Dorsey: Does Your Honor say I'm outside of the record?

The Court: No, I don't, but I say this, you can comment on the fact that Frank refused to meet this man, if that's in the record, you have a right to do that.

If Innocent, Would Have Faced Conley.

Mr. Dorsey: This man Frank, a graduate of Cornell, the superintendent of the pencil factory, so anxious to ferret out this murder that he had phoned Schiff three times on Monday, April 28th, to employ the Pinkerton Detective Agency, this white man refused to meet this ignorant negro, Jim Conley. He refused upon the flimsy pretext that his counsel was out of town, but when his counsel returned, when he had the opportunity to know at least something of the accusations that Conley brought against this man, he dared not let him meet him. It is unnecessary to take up time discussing that. You tell me that the weakest among you, if you were innocent and a man of black skin charges you with an infamous murder, that any lawyer, Rosser or anybody else, could keep you from confronting him and nailing the lie? No lawyer on earth, no lawyer that ever lived in any age or any clime could prevent me, if I were innocent, from confronting a man who accused me wrongfully, be he white or black.

Tried to Hang Newt Lee.

And you went in and interviewed Newt Lee down yonder at twelve o'clock, Tuesday night, April 29th. And what did you do? Did you act like a man who wanted to get at the truth, who didn't know it and wanted to get at the truth? Ah, no. Instead of going into that room and taking up with this negro Newt Lee, the man towards whom you had directed suspicion infamously to save your own neck, a man that you would have seen hung on the gallows in order to save your reputation with the people on Washington street and the members of the B'nai B'rith, did you make an earnest, honest, conscientious effort, as an innocent employer would with his employee, to get at the truth?

No; according to Lee, you hung your head and quizzed him not, but predicted that both Lee and you would go to hell if Lee continued to tell the story which he tells even until this good day: and then in your statement here, try to make it appear that your detective Scott and old John Black concocted a scheme against you and lied as to what occurred on that Tuesday night. The reason why Frank didn't put it up to Newt Lee and try to get Newt Lee to tell him how that murder occurred and what he knew about it, was because Frank knew that Lee was innocent, that he was the murderer and that he was adding to the dastardly crime of assault upon the virtue of this girl, was adding to the crime of murder of this girl, another infamous effort to send this negro to the gallows, in order to save his reputation and neck.

Listen at this—he's smart, and just listen at how, in his statement, he qualifies and fixes it up so that, when we come back with rebuttal, the technical laws will protect him: "They (meaning the detectives) stress the possibility of couples having been let into the factory at night"—by night watchmen? No,—"By night Watchman Newt Lee." Lee hadn't been there but two or three weeks,—three weeks. Frank could have told you that the detectives stressed the fact that couples went in there holidays, Saturdays and at

nights, at all times and at any time when other night watchmen were there, but Newt Lee, having been there but three weeks, he effectively shuts off the State from impeaching his statement or contradicting it, and therefore, he tells you that the detectives stressed the fact that couples had been in here while the night watchman, Newt Lee, was watching, —and Newt hadn't been there but three weeks.

That wasn't the period, that wasn't the time. During that three weeks that old Newt was night watching, there wasn't but one person for whom your passion burned, and that was Mary Phagan. And she wouldn't meet you, and she didn't meet you any time during that period that Newt Lee as night watching. But in the summer previous, when Dalton was seen to go there, if it be not true that couples were admitted, why didn't you make the bold, emphatic, challenging statement that at no time were couples ever admitted? And then you tell me that that's a good statement and a fair statement and a frank statement?

Frank's Statements Not Substantiated.

Now, another thing. Listen at this—I read from the defendant's statement: "Now, with reference to these spots that are claimed to be blood and that Mr. Barrett found, I don't claim they are not blood, they may have been, they were right close to the ladies' dressing room, and we have accidents there, and by the way, in reference to those accidents, the accidents of which we have records are not the only accidents that have happened there. Now, we use paint and varnish around there, a great deal of it, and while I don't say that this is not blood, it may be, but it could also have been paint; I have seen the girls drop bottles of paint and varnish and have them break there on the floor, I have seen that happen right close to that spot. If that had been fresh red paint or if it had been fresh red blood and that haskoline compound, that soap in it which is a great solvent, had been put on there in the liquid state, it wouldn't have

shown up white, as it showed up then, but it would have showed up either pink or red."

Haskoline Smeared Over Blood.

Now, first, contrast that statement for a moment with this statement with reference to the condition of the floor where Barrett worked. There he says there wasn't a spot, much less a blood spot,—"looked at the machinery and the lathe, looked at the table on which the lathe stands and the the lathe bed and the floor underneath the lathe and there wasn't a spot, much less a blood spot underneath." All right; you say that that wasn't blood, you say that that haskoline wouldn't turn that color. In the name of goodness, in the name of truth, I ask you, if that haskoline mixed with that blood on the second floor wouldn't have produced the identical result that these witnesses have sworn, if it be true, as Mr. Rosser stated, that you don't attach any importance to the cabbage findings and experiments made in this case, why didn't you devote a little of your time to bringing before this jury a reputable chemist and a man who could sustain you in that statement? You had that evidence in your possession, or if you were able to bring in these medical experts here to tear down the powerful evidence of Doctor Roy Harris, as eminent an authority as lives in the State of Georgia, in the name of truth and fair play, before you men who ought to have every fact that will enable you to get at the truth, why didn't you bring one chemist to sustain you? There's but one answer, and you know what it is. Those spots were blood, they were blood over which had been placed that substance, haskoline, and the color that blood and haskoline would make upon that floor was the identical color found there by the numerous witnesses who saw it. Important? There is no more important fact for you to have shown than that this haskoline, when wiped over blood, would have made a color the like unto which Frank in his statement would have you believe would have been made.

Doctor Pronounced It Blood.

Are you going to accept the statement of this man, with all these circumstances unsupported by chemists or anybody on earth, because they couldn't get them to come in and stultify themselves on that point, as against the evidence of all these witnesses who have told you that that was blood, and against the evidence of Doctor Claud Smith, the City Bacteriologist of the City of Atlanta, who tells you that through a chemical analysis he developed the fact that that was blood?

This defense, gentlemen—they have got no defense, they never have come into close contact in this case, except on the proposition of abuse and villification. They circle and flutter but never light; they grab at varnish and cat's blood and rat's blood and Duffy's blood, but they never knuckle down and show this jury that it wasn't blood; and in view of the statement of that boy, Mel Stanford, who swept that floor Friday afternoon, in view of the statement of Mrs. Jefferson, in view of the statement of "Christopher Columbus" Barrett, who tells the truth, notwithstanding the fact that he gets his daily bread out of the coffers of the National Pencil Company, you know that that was the blood of this innocent victim of Frank's lustful passion.

The defense is uncertain and indistinct on another proposition, they flutter and flurry but never light when it comes to showing you what hole Jim Conley pushed his victim down. Did he shoot her back that staircase back there? No. Why? Because the dust was thick over it. Because unimpeached witnesses have shown you it was nailed down; because if he had shot her down that hole, the boxes piled up there to the ceiling would have as effectively concealed her body as if she had been buried in the grave, for some days or weeks. Did he shoot her down this other hole in the Clark Woodenware Company's place of business? Where, even if what Schiff says is true, that they kept the shellac there, it would nevertheless have concealed her body a longer time than to put it down there by the dust bin where

the fireman and people were coming in through the back door. Did this negro, who they say robbed this girl, even if he had taken the time to write the notes, which, of course, he didn't—even after he had knocked her in the head with that bludgeon, which they tell you had blood on it, and robber her, even if he had been such a fool and so unlike the other members of his race, by whom brutal murders have been committed, should have taken time to have tied a cord around her neck, a cord seldom found down there in the basement, according to your own statement, except when it's swept down in the trash, but a cord that hangs right up there on the office floor, both back there in the varnish room and up there in the front. If he had done all that,—a thing you know that he didn't do, after he had shot her down in that hole in the Clark Woodenware Company, down there in that wing of the place where they keep this shellac, if they do keep it, why would that negro have gone down there and moved her body, when she was more securely fixed down there? And why was it, will you tell me, if he shot her down that scuttle hole, that he wrote the notes and fixed the cord, and will you tell me how it happens that, when after this man Holloway, on May 1st, had grabbed old Jim Conley, when he saw him washing his shirt and said "he's my nigger,"—fifteen days afterwards, when squad number two of the Pinkerton people had been searching through that factory a whole day and right down in that area, the elevator being run, the detectives, both the Pinkertons and the city force had looked around there immediately after the crime, will you tell me how it happened that, if he shot her down that hole, that there was so much blood not found until the 15th of May, and more blood than that poor girl is ever shown to have lost?

Didn't Want to Examine Blood.

Another thing: This man Frank says that "Mr. Quinn said he would like to take me back to the metal department on

the office floor, where the newspapers that morning stated that Mr. Barrett of the metal department had claimed he had found blood spots, and where he had found some hair." Although he had seen in the morning papers that this man Barrett claimed to have seen blood there, before he went back to see it, although this thing tore him all to pieces, and although he was anxious to employ a detective,—so anxious that he phoned Schiff three times to get the Pinkertons down, according to his own statement, Lemmie Quinn had to come and ask him back to see the blood spots on the second floor, found by this man Barrett.

Is that the conduct of a man, the head of a pencil factory, who had employed detectives, anxious to assist the police,—saw it in the newspapers and yet Lemmie Quinn had to go and ask him to go back? And then he tells you in this statement, which is easy to write, was glibly rattled off, a statement that you might expect from a man that could plot the downfall of a girl of such tender years as little Mary Phagan, that he went back there and examined those blood spots with an electric flashlight, that he made a particular and a minute examination of them, but strange to say, not even Lemmie Quinn comes in to sustain you, and no man on earth, so far as this jury knows, ever saw Leo M. Frank examining what Barrett said and Jefferson said and Mel Stanford said and Beavers said and Starnes said and a host of others said was blood near the dressing room on the second floor. You know why? Because it never happened. If there was a spot on this earth that this man Frank didn't want to examine, if there was a spot on earth that he didn't want any blood found at all, it was on the second floor, the floor which, according to his own statement, he was working on when this poor girl met her death.

Went to Morgue Second Time.

Schiff, he says, saw those notes down there and at Police Headquarters. Frank says he visited the morgue not only

once but twice. If he went down there and visited that morgue and saw that child and identified her body and it tore him all to pieces, as he tells you it did, let any honest man, I don't care who he be, on this jury, seeking to fathom the mystery of this thing, tell me why it was, except for the answer that I give you, he went down there to view that body again? Rogers said he didn't look at it; Black said he didn't see him look at it.

Mr. Rosser: He is mis-stating the evidence. Rogers never said that he didn't look at the body, he said he was behind him and didn't know whether he did or not; and Black said he didn't know whether he did or not.

Mr. Dorsey: Rogers said he never did look at that body.

Mr. Arnold: I insist that isn't the evidence. Rogers said he didn't know and couldn't answer whether he saw it or not, and Black said the same thing.

I'm not going to quibble with you. The truth is, and you know it, that when that man Frank went down there to look at that body of that poor girl, to identify her he never went in that room, and if he did look at her long enough to identify her, neither John Black nor Rogers nor Gheesling knew it. I tell you, gentlemen of the jury, that the truth of this thing is that Frank never looked at the body of that poor girl, but if he did, it was just a glance, as the electric light was flashed on and he immediately turned and went into another room.

Mr. Rosser: There isn't a bit of proof that he went into another room, I object again, sir, there isn't a particle of proof of that.

The Court: Look it up and see what was said.

Mr. Dorsey: I know this evidence.

Mr. Rosser: If Your Honor allows it to go on, there's no use looking it up. He never said anything about going into another room.

The Court: What is your remembrance about that?

Mr. Rosser: It isn't true, Your Honor.

Mr. Dorsey: I challenge you to produce it.

Mr. Rosser: There's no use to challenge it, if he goes on and makes the argument they make, those deductions for which there's no basis, but when he makes a misstatement of the evidence, it's perfectly useless to go on and look it up, and we decline to look it up.

Mr. Dorsey: I insist that they look it up. I insist that I'm sticking to the facts.

Mr. Rosser: No, you are not.

The Court: Well, if you'll give me the record I'll look it up. Mr. Haas look that up and see what is the fact about it.

Mr. Dorsey: I know what Boots Rogers said myself.

The Court: The jury knows what was said.

Mr. Dorsey: That's quibbling—

Mr. Arnold: Is that correct, Your Honor?

The Court: No, that's not correct; whenever they object, Mr. Dorsey, if you don't agree upon the record, have it looked up, and if they are right and you know it, and you are wrong, or if they are wrong and you also know it,—if they are wrong they are quibbling, and if they are right they are not quibbling. Now, just go on.

Wanted to Listen for Suspicions.

If that man Frank ever looked at that girl's face,—I challenge them to produce the record to show it,—it was so brief that if she was dirty and begrimed and her hair was bloody and her features contorted, I tell you that, if he didn't know her any better than he would have you believe he knew her, he never could have identified her as Mary Phagan. Never could. And I say to you, gentlemen of the jury, that the reason why this man re-visited that morgue on Sunday afternoon, after he had failed to mention the subject of the death in the bosom of his family at the dining table, when he tells you that it tore him all to pieces, there was but one reason

for re-visiting that morgue, and that was to put his ear to the ground and see if at that hour there was any whisper or suggestion that Leo M. Frank, the guilty man, had committed the dastardly deed.

The Court: Mr. Haas, look up and see what they claim Boots Rogers said.

Sight of Girl Unnerved Him.

Black didn't see him, Rogers didn't see him, Gheesling didn't see him. One of the earliest to arrive, the superintendent of the factory, (Rogers said he had his eye on him) he turned and stepped aside, and he himself said that the sight tore him all to pieces, and he seeks to have you believe that that automobile ride and the sight of that poor girl's features accounts for the nervousness which he displayed; and yet we find him going, like a dog to his vomit, a sow to her wallow, back to view the remains of this poor little innocent girl. And I ask you, gentlemen of the jury, if you don't know that the reason Leo M. Frank went down to that morgue on Sunday afternoon was to see if he could scent anything in the atmosphere indicating that the police suspected Leo M. Frank? He admits his nervousness, he admits his nervousness in the presence of the officers; the Seligs say that he wasn't nervous, that he wasn't nervous Saturday night when he telephoned Newt Lee to find out if anything had happened at the factory, that he wasn't nervous when he read this Saturday Evening Post—

Mr. Rosser: Now, the question of whether Boots said he went into that room is now easily settled. (Mr. Rosser here read that portion of the examination of the witness Rogers.)

Mr. Dorsey: Well, that's cross examination, ain't it?

Mr. Rosser: Yes, but I presume he would tell the truth on cross examination, I don't know; he passed out of his view, he didn't say he went into a room.

Mr. Dorsey: Correct me if I'm wrong. Boots Rogers said he didn't go where the corpse lay, and that's the proposition that we lay down.

Mr. Rosser: That isn't the proposition either; now you made a statement that isn't true, the other statement isn't true; Rogers said that when he left, "he went out of my view," he was practically out of his view all the time. I was just trying to quote the substance of that thing.

He wanted to get out of the view of any man who represented the majesty and dignity of the law, and he went in behind curtains or any old thing that would hide his countenance from those men. And he said on the leading examination—

Mr. Rosser: I don't know what you led out of him, but on the cross he told the truth.

I come back to the proposition in the bosom of his family, —notwithstanding he read that Saturday Evening Post out there in the hall Saturday night, this thing kept welling in his breast to such an extent that he had to make a play of being composed and cool, and he went in there and tried to break up the card game with the laughter that was the laughter of a guilty conscience. Notwithstanding the fact that he was able, Sunday, at the dining table and in the bosom of his family, when he hadn't discussed this murder, when Mrs. Selig didn't know that it was a murder that concerned her, when the whole Selig household were treating it as a matter of absolute indifference, if he wasn't nervous there, gentlemen of the jury, surely he was, as I am going to show you, nervous when he came face to face and had to discuss the proposition with the minions of the law.

Frank's Nervousness Apparent.

He was nervous when he went to run the elevator, when he went to the box to turn on the power, and he says here in his statement, unsupported by any oath, that he left that box

open because some member of the fire department had come around and stated that you must leave that box open because the electricity might innocently electrocute some member of the fire department in case of fire. I ask you, gentlemen of the jury, what was the necessity for leaving the box open when a simple turn of the lever would have shut off the electricity and enabled the key to have been hung up in the office, just exactly like old Holloway swore when he didn't know the importance of the proposition, in the affidavit which I have and which was submitted in evidence to you, that that box was locked and the key was put in Frank's office? Why don't they bring the fireman here who went around and gave such instructions? First, because it wasn't necessary, they could have cut the electricity off and locked the box. And second, they didn't bring him because no such man ever did any such thing, and old Holloway told the truth before he came to the conclusion that old Jim Conley was "his nigger" and he saw the importance of the proposition that when Frank went there Sunday morning the box was unlocked and Frank had the key in his pocket.

Mr. Rosser: You say Mr. Frank had the key in his pocket? No one mentioned it, that isn't the evidence; I say it was hung up in the office, that's the undisputed evidence.

Mr. Dorsey: Holloway says when he got back Monday morning it was hung up in the office, but Boots Rogers said this man Frank,—and he was sustained by other witnesses,—when he came there to run that elevator Sunday morning, found that power box unlocked.

Mr. Rosser: That's not what you said.

Mr. Dorsey: Yes it is.

Mr. Rosser: You said Frank had the key in his pocket next morning, and that isn't the evidence, there's not a line to that effect.

The Court: Do you still insist that he had it in his pocket?

Mr. Dorsey: I don't care anything about that; the

point of the proposition, the gist of the proposition, the force of the proposition is that old Hollway stated, way back yonder in May, when I interviewed him, that the key was always in Frank's office; this man told you that the power box and the elevator was unlocked Sunday morning and the elevator started without anybody going and getting the key.

Mr. Rosser: That's not the point he was making, the point he was making, to show how clearly Frank must have been connected with it, he had the key in his pocket. He was willing to say that when he ought to know that's not so.

The Court: He's drawing a deduction that he claims he's drawing.

Mr. Rosser: He doesn't claim that. He says the point is it was easily gotten in the office, but that's not what he said.

The Court: You claim that's a deduction you are drawing?

Mr. Dorsey: Why, sure.

The Court: Now, you don't claim the evidence shows that?

Mr. Dorsey: I claim that the power box was standing open Sunday morning.

The Court: Do you insist that the evidence shows he had it in his pocket?

Mr. Dorsey: I say that's my recollection, but I'm willing to waive it; but let them go to the record, and the record will sustain me on that point, just like it sustains me on the evidence of this man Rogers, which I'm now going to read.

Frank Stepped Out of Room.

Rogers said "Mr. Gheesling caught the face of the dead girl and turned it over towards me; I looked then to see if anybody followed me, and I saw Mr. Frank step from outside of the door into what I thought was a closet, but I after-

wards found out was where Mr. Gheesling slept, or somebody slept, there was a little single bed in there."

Mr. Rosser: He did say that upon direct examination, but here on cross examination he stated that he didn't know that he went in that room; now you take his whole testimony to determine what he said; he says "I don't know,"—that he only surmised on that particular point, but afterwards he says "I don't know."

The Court: Whenever he is inside of the record, don't interrupt him, but whenever he's outside of the record you can do it.

Says He "Identified" Her.

I don't want to misrepresent this testimony, for goodness knows there's enough here without resorting to any such practice as that, and I don't want to mislead this jury and furthermore, I'm not going to do it. Frank says, after looking at the body, "I identified that little girl as the one that had been up shortly after the noon of the day previous and got her money from me. I then unlocked the safe and took out the pay roll book and found that it was true that a little girl by the name of Mary Phagan did work in the metal plant and that she was due to draw $1.20, the pay-roll book showed that, and as the detective had told me that some one had identified the body of that little girl as that of Mary Phagan, there could be no question but what it was one and the same girl." And he might have added, "as I followed her back into the metal department and proposed to her that she submit to my lascivious demands, I hit her, she fell, she struck her head; to protect my character, I choked her—to protect my reputation I choked her, and called Jim Conley to move her down to the basement, and for all these reasons, because I made out the pay-roll for fifty-two weeks during which time Mary had worked there, I know, for these reasons, although I didn't look at her and couldn't have recognized her if she was in the dirty, distorted condition," he tells you in

this statement, she really was, "but I know it was Mary Phagan."

And he corroborates in his statement these detectives, he says down at the undertaking establishment, "went down a long dark passageway with Mr. Rogers following, then I came and Black brought up the rear, Gheesling was on the opposite side of the little cooling table, the table between him and me; he took the head in his hands, put his finger exactly where the wound in the left side back of the head was located"; and he seeks to have you believe that he "noticed the hands and arms of the little girl were very dirty, blue and ground with dirt and cinders, nostrils and mouth,—the mouth being open,—nostrils and mouth just full of saw-dust, the face was all puffed out, the right eye was blackened and swollen and there was a deep scratch over the left eye on the forehead." He tells in his statement that in that brief glance, if he ever took any glance at all, he saw that. The only way in the world to believe him is to say that these men, John Black and Boots Rogers, who have got no interest in this case in God's world but to tell the truth, perjured themselves to put the rope around the neck of this man. Do you believe it? Starnes is a perjurer, too? Starnes says "when I called this man up over the telephone I was careful not to mention what had happened"; and unless Starnes on that Sunday morning in April was very different from what you would judge him to be by his deportment on the stand here the other day, he did exactly what he said he did. And yet this defendant in his statement said he says "what's the trouble, has there been a fire?" He says "No a tragedy, I want you to come down right away"; "I says all right"; "I'll send an automobile after you," and Starnes says that he never mentioned the word tragedy, and yet, so conscious, so conscious was this man Frank when Rogers and Black went out there and he nervously twitching at his collar, "What's the trouble, has the night watchman reported anything," asked them not, "has there been a fire," but "has there been a tragedy?" But Starnes, the man who first went after Newt

Lee, the negro night watchman, because he pointed his finger of suspicion at him,—Starnes, the man who went after Gantt because this defendant pointed the finger of suspicion at him,—Starnes, the man who has been a detective here on the police force for years and years, is a perjurer and a liar; to do what? Simply to gratify his ambition and place a noose around the neck of this man Frank, when he could have gone out after, if the circumstances had warranted it, or if he had been a rascal and wanted to travel along the line of lest resistance, Newt Lee or Gantt or Conley.

"Has Anything Happened?"

Another thing: Old Newt Lee says that when this defendant called him Saturday night, a thing that he had never done during the time that he had been there at that pencil factory serving him as night watchman, Newt Lee tells you, although the defendant says that he asked about Gantt, Newt Lee says that Gantt's name was never mentioned, and that the inquiry was "has anything happened at the factory?"

You tell me, gentlemen of the jury, that all these circumstances, with all these incriminating circumstances piling up against this man that we have nothing in this case but prejudice and perjury?

Newt says he never mentioned Gantt. Frank in his statement, says "I succeeded in getting Newt Lee, and asked him if Mr. Gantt had gone." He instructed this man Newt Lee to go with Gantt, to watch him, to stay with him, and old Newt Lee wouldn't even let Gantt in that factory unless Frank said that he might go up. He had instructed Lee previous thereto not to let him in for the simple reason he didn't want Gantt coming down there. Why? Because he didn't want him to come down and see and talk with little Mary for some reason I know not why; and old Newt Lee stopped this man Gantt on the threshold and refused to let him go up, and this man Frank says "you go up with him and see that he

gets what he wants and usher him out." And yet, though he had never done any such thing during the time Newt Lee had been up there, he innocently called Newt up to find out, he said, if Gantt had gone and Newt said to find out if everything was all right at the factory; and you know that the reason he called up was to find out if Newt, in making his rounds, had discovered the body of this dead girl.

"Would you convict him on this circumstance or that circumstance?" No. But I would weave them all together, and I would make a rope, no one strand of which sufficiently strong to send this man to the gallows for this poor girl's death, but I would take them all together and I would say, in conformity with the truth and right, they all make such a rope and such a strand and such a cable that it's impossible not only to conceive a reasonable doubt, but to conceive any doubt at all.

Frank was in jail, Frank had already stated in his affidavit at Police Headquarters, which is in evidence, contradicting this statement and this chart which they have made, that he didn't leave his office between certain hours. Frank didn't know that his own detective, Harry Scott, had found this little Monteen Stover,—and I quote her evidence, I quote it and I submit it shows that she went in that office and went far enough in that office to see who was in there, and if she didn't go far enough in, it's passing strange that anybody in that office,—Frank himself, could have heard that girl and could have made his presence known. Scott, their own Pinkerton detective, gets the statement from Monteen Stover, and he visits Leo M. Frank in his cell at the jail. Frank in order to evade that, says, "to the best of my recollection I didn't stir out of the office, but it's possible that, in order to answer a call of nature, I may have gone to the toilet, these are things that a man does unconsciously and can't tell how many times nor when he does it."

Didn't Hear Monteen Stover.

I tell you, gentlemen of the jury, that if this man Frank had remained in his office and was in his office when Monteen Stover went in there, he would have heard her, he would have seen her, he would have talked with her, he would have given her her pay. I tell you gentlemen of the jury, that if this man Frank had stepped out of his office to answer a call of nature, that he would have remembered it, and if he wouldn't have remembered it, at least he wouldn't have stated so repeatedly and unqualifiedly that he never left his office, and only on the stand here, when he faces an honest jury, charged with the murder, and circumstances banked up against him, does he offer the flimsy excuse that these are things that people do unconsciously and without any recollection. But this man Scott, in company with Black, after they found that little Monteen Stover had been there at exactly the time that old Jim Conley says that that man with this poor little unfortunate girl had gone to the rear, and on May 3rd, the very time that Monteen Stover told them that she had been up there, at that time this Pinkerton detective, Scott, as honest and honorable a man as ever lived, the man who said he was going hand in hand with the Police Department of the City of Atlanta and who did, notwithstanding the fact that some of the others undertook to leap with the hare and run with the hounds, stood straight up by the city detectives and by the State officials and by the truth, put these questions, on May 3rd, to Leo M. Frank: says he to Frank:

Detective Scott Loyal to Truth.

"From the time you got to the factory from Montag Brothers, until you went to the fourth floor to see White and Denham, were you inside your office the entire time?" Answer: "I was." Again, says Scott—and Mr. Scott, in jail, when Frank didn't know the importance of the propo-

sition because he didn't know that little Monteen Stover had said that she went up there and saw nobody in his office—Scott came at him from another different angle: "From the time you came from Montag Brothers, until Mary Phagan came, were you in your office?" and Frank said "yes." "From twelve o'clock," says Scott, "until Mary Phagan entered your office and thereafter until 12:50, when you went upstairs to get Mrs. White out of the building, were you in your office?" Answer: "Yes." "Then," says Scott, "from twelve to twelve thirty, every minute during that half hour, you were in your office?" and Frank said "yes." And not until he saw the wonderful capacity, the wonderful ability, the wonderful devotion of this man Scott to the truth and right did he ever shut him out from his counsel. No suggestion then that he might have had to answer a call of nature, but emphatically, without knowing the importance, he told his own detective, in the presence of John Black, that at no time, for no purpose, from a few minutes before this unfortunate girl arrived, until he went upstairs, at 12:50, to ask Mrs. White to leave, had he been out of his office.

Then you tell me that an honest jury, with no motive but to do right, would accept the statement of this man Frank, that he might have been, these things occur so frequently that a man can't remember, and by that statement set aside what he said to his own detective, Harry Scott? Well, you can do it; you have got the power to do it; no king on the throne, no potentate has the power that is vested in the American jury. In the secret of your consultation room, you can write a verdict that outrages truth and justice, if you want to, and no power on earth can call you to account, but your conscience, but so long as you live, wherever you go, that conscience has got to be with you,—you can't get away from it; and if you do it, you will lose the peace of mind that goes with a clear conscience of duty done, and never again, so long as you shall last upon this earth, though others not knowing the truth might respect you, will you ever have your own self-esteem.

Couldn't Break Down Geo. Epps.

I have already talked to you about this time element. You made a mighty effort to break down little George Epps. You showed that McCoy didn't have a watch; have tried to show this man Kendley was a liar because he knew the little girl and felt that he knew in his heart who the murderer was. But there's one witness for the State against whom not a breath of suspicion has been apparent,—we impeached these men Matthews and Hollis by other witnesses besides George Epps and besides George Kendley and besides McCoy, and as to how that little girl got to that factory, gentlemen, this man Mr. Kelley, who rode on the same car with Hollis, the same car that Hollis claims or Matthews claims that he rode on, knew the girl, knew Matthews, tells you and he's unimpeached and unimpeachable, and there's no suggestion here, even if you set the evidence of Epps and McCoy and Kenley aside, upon which an honest jury can predicate a doubt that this man Kelley of the street car company didn't tell the truth when he says that she wasn't on that car that this man Matthews says she was and she went around, because "I rode with Matthews and I know her and I know Matthews."

And Mr. Rosser says that he don't care anything about all this medical evidence,—he don't care anything about cabbage. I'm not going back on my raising here or anywhere, and I tell you, gentlemen, that there is no better, no more wholesome meal, and when the stomach is normal and all right, there is nothing that is more easily digested, because the majority of the substances which you eat takes the same length of time that cabbage requires. And I tell you that cabbage, corn bread and buttermilk is good enough for any man. I tell you, gentlemen of the jury, that Mr. Rosser's statement here, that he don't care anything for that evidence of Doctor Roy Harris about this cabbage which was taken out of that poor girl's stomach, is not borne out by the record in this case. It wouldn't surprise me if these able,

astute gentlemen, vigilant as they have shown themselves to be, didn't go out and get some doctors who have been the family physicians and who are well known to some of the members of this jury, for the effect that it might have upon you.

Mr. Arnold: There's not a word of evidence as to that; that's a grossly improper argument, and I move that that be withdrawn from the jury.

Mr. Dorsey: I don't state it as a fact, but I am suggesting it.

Mr. Arnold: He has got no right to deduct it or suggest it, I just want Your Honor to reprove it,—reprimand him and withdraw it from the jury; I just make the motion and Your Honor can do as you please.

I am going to show that there must have been something besides the training of these men, and I'm going to contrast them with our doctors.

Mr. Arnold: I move to exclude that as grossly improper. He says he's arguing that some physician was brought here because he was the physician of some member of the jury, it's grossly unfair and it's grossly improper and insulting, even, to the jury.

Mr. Dorsey: I say it's eminently proper and absolutely a legitimate argument.

Mr. Arnold: I just record my objection, and if Your Honor lets it stay in, you can do it.

Mr. Dorsey: Yes, sir; that wouldn't scare me, Your Honor.

The Court: Well, I want to try it right, and I suppose you do. Is there anything to authorize that inference to be drawn?

Mr. Dorsey: Why sure; why, the fact that you went out and got general practitioners, that know nothing about the analysis of the stomach, know nothing about pathology.

The Court: Go on, then.

Mr. Dorsey: I thought so.

Mr. Arnold: Does Your Honor hold that is proper,—"I thought so?"

The Court: I hold that he can draw any inference legitimately from the testimony and argue it,—I don't know whether or not there is anything to indicate that any of these physicians was the physicians of the family.

Mr. Rosser: Let me make the suggestion, Your Honor ought to know that before you let him testify it.

The Court: He says he don't know it, he's merely arguing it from an inference he has drawn.

Physicians Chosen for Influence on Jury.

I can't see any other reason in God's world for going out and getting these practitioners, who have never had any special training on stomach analysis, and who have not had any training with the analysis of tissues, like a pathologist has had, except upon that theory. And I am saying to you, gentlemen of the jury, that the number of doctors that these men put up here belie the statement of Mr. Rosser that he doesn't attach any importance to this cabbage proposition, because they knew, as you know, that it is a powerful factor in sustaining the State's case and breaking down the alibi of this defendant. It fastens and fixes and nails down with the accuracy only which a scientific fact can do, that this little girl met her death between the time she entered the office of the superintendent and the time Mrs. White came up the stairs at 12:35, to see her husband and found this defendant at the safe and saw him jump. You tell me that this Doctor Childs, this general practitioner, who don't know anything about the action of the gastric juices on foods in the stomach, this man of the short experience of seven years, this gentleman, splendid gentleman though he is, from Michigan, can put his opinion against the eminent Secretary of the Georgia Board of Health, Doctor Roy Harris? I tell you **no.**

Overwhelming Evidence of Physicians.

Mr. Rosser says that old Judge Samps Harris admitted him to the bar, that he knows him, but the son is not of the same quality as the father. I'm proud of the fact that old Judge Samps Harris likewise admitted me to the bar, and I tell you that no such grand man ever had a son that would prostitute his superb talents to a misrepresentation of the truth here or anywhere. And before you or anybody can set aside the scientific opinion of this expert, who is pre-eminent among the ablest of his profession, and accept the statement of this man from Michigan, or Bachman, from Alsace-Lorraine, this pathologist who didn't even know the name of the first step in the process of digestion—when you take their opinion as against the opinion of this native born Georgia son, who holds the highest honor that can be given to a man in his profession in the State, you have got to have some better display of knowledge of the subject than they evince in this presence. You tell me that Hancock, this surgeon of the Georgia Railway & Power Company, a man that saws off bones, has experimented with cabbage as put into, and diseases of, the stomach as Doctor Johnson does? And do you tell me that Doctor Olmstead, who had an absolute "diarrhea of words," an absolute "constipation of ideas," so far as imparting anything, though he is a good man and an honest man and a splendid practitioner; you tell me this man Kendrick, a general practitioner who hasn't opened a book on this subject in ten years, good man as he is, general practitioner as he is, popular as he is, a man who boosted Roy Harris, according to his statement, to the position that he holds; you tell me that their word in this forum should stand for a minute against the testimony of Roy Harris, a pathologist of note; against Clarence Johnson, the stomach specialist, who has no superior in Georgia, and who fills the chair down yonder at the college over which Willis Westmoreland is President; you tell me that this man George Niles, a stomach specialist, would tell you a thing that isn't true, and you

wouldn't take his word—a specialist on that proposition—or Doctor Funke, a pathologist, who examined the privates of this poor little girl, and who tells you that science could predict and that he would predict, that the opinion of Doctor Harris, that this girl met her death somewhere about thirty minutes—that isn't true? And in opposition to that, set up the testimony of Doctor Willis Westmoreland, gangrened with prejudice to such an extent that, when I exhibited to him the American Medical Journal, this authoritative journal, in which Doctor Bright, the very man in Philadelphia under whom Doctor Hancock studied—so intent was he and so bitter was he, that he told you that that was a journal of quacks and mountebanks; and you tell me that this surgeon, who tried to run the Board of Health of the State of Georgia and threatened to resign if they didn't do like he wanted them to do and turn off this man Roy Harris, that he says was guilty of scientific dishonesty, when we tender the present President of the Board and the minutes of the meeting showing absolutely that there isn't a word of truth in it you tell me that you didn't attach any importance to the test, or that a jury of honest men wouldn't accept the opinion of these scientific experts, skilled in their business, as against the opinion of these men who are only surgeons and general practitioners? I tell you that if it was a matter of importance to you—and that's the standard the law sets up in a case of this kind,—you wouldn't hesitate a minute. "I take acts, not words," said old Judge Lochrane, in the 43rd Georgia.

Frank Nervous Before Arrest.

Now, briefly, let's run over this nervousness proposition. The man indicated nervousness when he talked to old man John Starnes, when Black went out to his house and he sent his wife down to give him nerve, although he was nearly dressed and she wasn't at all dressed, he betrayed his nervousness by the rapidity of his questions, by the form of his

questions. But first, before we get to that, he warned old Newt Lee to come back there Saturday at four o'clock, and dutiful old darkey that he was, old Newt walked in and Frank then was engaged in washing his hands. Jim Conley hadn't come, but he was looking for Conley, and he sent old Newt Lee out, although Newt insisted that he wanted to sleep, and although he might have found a cozy corner on any floor in that factory, with plenty of sacks and cords and other things to make him a pallet, he wanted old man Newt to leave. Why? When Newt said he was sleepy he wanted him to leave so that he could do just exactly what old Jim Conley told you Frank made his promise to do,—he wanted an opportunity to burn that body, so that the City Police of Atlanta wouldn't have the Phagan mystery solved today, and probably it would not even be known that the girl lost her life in that factory.

His anxiety about Gantt going back into that building that afternoon, when he hung his head and said to Gantt that he saw a boy sweeping out a pair of shoes, and Gantt says "what were they, tan or black?" And ah, gentlemen, it looked like Providence had foreordained that this old, long-legged Gantt should leave, not only one pair, but two pairs. "What kind were they," he said; he gave him the name of one color, and then, as Providence would have it, old Gantt said, "ah, but I've got two pair," and then it was that he dared not say, because he couldn't then say, that he saw that man also sweeping them out; then it was that he said "all right, Newt, go up with him and let him get them," and lo and behold, the shoes that this man Frank would have him believe were swept out, both tan and black were there. Gantt tells you how he acted; Newt tells you how he jumped. Rogers and Black, honest men when they went out there after Mr. Starnes had talked to him, tell you that he was nervous. Why? Why do you say you were nervous; because of the automobile ride? Because you looked into the face of this little girl and it was such a gruesome sight? I tell you, gentlemen of the jury, and

you know it, that this man Frank needed, when he had his wife go down to the door, somebody to sustain him. I tell you that this man Frank, when he had his wife telephone Darley to meet him at the factory, did it because he wanted somebody to sustain him. I tell you, gentlemen of the jury, that, because he sent for Mr. Rosser,—big of reputation and big of brain, dominating and controlling, so far as he can, everybody with whom he comes in contact, the reason he wanted him at the Police Headquarters, and the reason he wanted Haas, was because his conscience needed somebody to sustain him.

Trembled Like Aspen Leaf.

And this man Darley! We had to go into the enemy's camp to get the ammunition, but fortunately, I got on the job and sent the subpoena, and fortunately Darley didn't know that he didn't have to come, and fortunately he came and made the affidavit, to which he stood up here as far as he had to because he couldn't get around it, in which Darley says "I noticed his nervousness; I noticed it upstairs, I noticed it downstairs," when they went to nail up the door. "When he sat in my lap going down to the Police Headquarters he shook and he trembled like an aspen leaf." I confronted him with the statement, in which he had said "completely undone." He denied it but said "almost undone." I confronted him with the statement that he had made, and the affidavit to which he had sworn, in which he had used the language, "Completely unstrung," and now he changed it in your presence and said "almost completely unstrung."

You tell me that this man that called for breakfast at home, as Durant called for bromo seltzer in San Francisco, this man who called for coffee at the factory, as Durant called for bromo seltzer in San Francisco, you tell me that this man Frank, the defendant in this case, explains his nervousness by reason of the automobile ride, the view of the body,—as this man Durant, in San Francisco tried to

explain his condition by the inhalation of gas,—you tell me, gentlemen of the jury, that these explanations are going to wipe out the nervousness that you know could have been produced by but one cause, and that is, the consciousness of an infamous crime that had been committed?

But that ain't all: Rogers and Starnes and Gantt and this boy, then, L. O. Grice, the man who was going to take the train early Sunday morning, the man who was led by curiosity down into that place where the body lay before it was moved to the Coroner's;———————

(At this point a short intermission was ordered by the Court, after which the Solicitor resumed, as follows):

Frank Turned the Light Down.

Old Newt Lee says that when he went back there that afternoon he found that inside door locked,—a thing that never had been found before he got there at four o'clock, a thing that he never had found. Old Newt Lee says that Frank came out of his office and met him out there by the desk, the place where he always went and said "All right, Mr. Frank," and that Frank had always called him in and given him his instructions. But Newt Lee says that night, when he went into the cellar, he found the light, that had always burned brightly turned back so that it was burning just about like a lightning bug. You tell me that old Jim Conley felt the necessity to have turned that light down? I tell you that that light was turned down, gentlemen, by that man, Leo M. Frank, after he went down there Saturday afternoon, when he discovered that Conley wasn't coming back to burn the body, to place the notes by the body, that Conley had written, and he turned it down in the hope that the body wouldn't be discovered by Newt Lee during that night.

Scott's Devotion to Truth.

Monday evening, Harry Scott is sent for, the Pinkerton man—and it didn't require any affidavit to hold old Scott down to the truth, though after my experience with that man Darley, I almost trembled in my boots for fear this man Scott, one of the most material witnesses, although the detective of this defendant's company, might also throw me down. Scott says this man Frank, when he went there Monday afternoon, after he had anxiously phoned Schiff to see old man Sig Montag and get Sig Montag's permission—had phoned him three times—Scott says that he squirmed in his chair continually, crossed and uncrossed his legs, rubbed his face with his hand, sighed, twisted and drew long deep breaths. After going to the station Tuesday morning, just before his arrest—if he ever was arrested—just before his detention, at another time altogether from the time that Darley speaks of,—Darley, the man for whom he sent, Darley the man who is next to him in power, Darley the man that he wanted to sustain his nerve—Scott, your own detective, says that he was nervous and pale, and that when he saw him at the factory, his eyes were large and glaring. Tuesday morning, Waggoner, sent up there to watch him from across the street, says before the officers came to get him, he could see Frank pacing his office inside, through the windows, and that he came to the office window and looked out at him twelve times in thirty minutes,—that he was agitated and nervous on the way down to the station.

I want to read you here an excerpt from the speech of a man by the name of Hammond, when prosecuting a fellow by the name of Dunbar for the murder of two little children; it explains in language better than I can command, why all this nervousness:

Consciousness of Guilt Within Him.

"It was because the mighty secret of the fact was in his heart; it was the overwhelming consciousness of guilt striv-

ing within him; it was nature over-burdened with a terrible load; it was a conscience striving beneath a tremendous crushing weight; it was fear, remorse and terror—remorse for the past, and terror for the future. Spectral shadows were flitting before him"—the specter of the dead girl, the cord, the blood, arose. "The specter of this trial, of the prison, of the gallows and the grave of infamy. Guilt, gentlemen of the jury, forces itself into speech and conduct, and is its own betrayer."

Analysis of Conley's Evidence.

So far, not a word about Conley; not a word. Now, let's discuss Conley. Leave Conley out, you've got a course of conduct that shows that this man is guilty, because it is consistent with the theory of guilty and inconsistent with any other hypothesis, reasonable or otherwise.

Before going on to Conley, let's take those who are brought into this thing by Conley. Is Dalton a low-down character? If he is, isn't he just exactly the kind of man you would expect to find consorting with this woman, Daisy Hopkins? But if, as Mr. Reuben Arnold said, the fact that a man sometimes likes to go around with the ladies for immoral purposes, don't damn this man Frank, then why will it damn Dalton? I grant you that Dalton, in his young days, was not what he should have been. You took him back yonder in Walton County, at his old home, and brought up men here to impeach him about whom we know nothing. We took Dalton after he moved to Atlanta and we did for him what you didn't dare to undertake to do for Daisy,—we gave him a good character after he got away from that miserable crowd with whom he associated in his old home in Walton. Mr. Rosser said that once a thief, always a thief and eternally damned. Holy Writ, in giving the picture of the death of Christ on the Cross, says that, when He suffered that agony, He said to the thief, "This day shalt thou be with Me in Paradise;" and unless our religion is a fraud

and a farce, if it teaches anything, it is that man, though he may be a thief, may be rehabilitated, and enjoy a good character and the confidence of the people among whom he lives.

Dalton Corroborates Conley.

And this man Dalton, according to the unimpeached testimony of these people who have known him in DeKalb and Fulton since he left that crowd back yonder where he was a boy and probably wild and did things that were wrong, they tell you that today he is a man of integrity, notwithstanding the fact that he is sometimes tempted to step aside with a woman who has fallen so low as Daisy Hopkins. Did we sustain him? By more witnesses by far than you brought here to impeach him, and by witnesses of this community, witnesses that you couldn't impeach to save your life. Did we sustain him? We not only sustained him by proof of general good character, but we sustained him by the evidence of this man, C. T. Maynard, an unimpeached and unimpeachable witness, who tells you, not when Newt Lee was there, during the three weeks that Newt Lee was there, but that on a Saturday afternoon in June or July, 1912, he saw with his own eyes this man Dalton go into that pencil factory with a woman. Corroboration of Conley? Of course, it's corroboration. The very fact, gentlemen of the jury, that these gentlemen conducting this case failed absolutely and ingloriously even to attempt to sustain this woman, Daisy Hopkins, is another corroboration of Conley.

But, ah! Mr. Rosser said he would give so much to know who it was that dressed this man Conley up,—this man about whom he fusses, having been put in the custody of the police force of the City of Atlanta. Why, if you had wanted to have known, and if you had used one-half the effort to ascertain that fact that you used when you sent somebody down yonder,—I forget the name of the man,—to Walton County to impeach this man, Dalton, you could

have found it out. And I submit that the man that did it, whoever he was, the man who had the charity in his heart to dress that negro up,—the negro that you would dress in a shroud and send to his grave,—the man that did that, to bring him into the presence of this Court deserves not the condemnation, but the thanks of this jury.

Reason for Police Keeping Conley.

Let's see what Mr. William Smith, a man employed to defend this negro Conley, set up in response to the rule issued by His Honor, Judge Roan, and let's see now if they are not all sufficient reasons why Conley should not have been delivered into the custody of the City police of Atlanta, though they are no better, but just as good as the Sheriff of this County. "Respondent (Jim Conley, through his attorney) admits that he is now held in custody, under orders of this Court, at the police prison of the City of Atlanta, having been originally held in the prison of Fulton County, also under order of this Court, the cause of said commitment by this Court of respondent being the allegation that respondent is a material witness in the above case,—that of The State against Leo M. Frank—"in behalf of The State, and it is desired to insure the presence of respondent at the trial of the above case." So he couldn't get away, in order to hold him. "Respondent admits that he is now at the City police prison at his own request and instance, and through the advice and counsel of his attorney. Respondent shows to the Court that the City police prison is so arranged and so officered that respondent is absolutely safe as to his physical welfare from any attack that might be made upon him; that he is so confined that his cell is a solitary one, there being no one else even located in the cell block with him; that the key to this cell block and the cell of respondent is always in the possession of a sworn, uniformed officer of the law; that under the instructions of Chief of Police Beavers, said sworn officers are not allowed to permit any one to approach

this respondent or come into his cell block, except the attorney of respondent and such persons as this respondent may agree to see and talk with; that respondent, so confined, is protected from any physical harm and is protected from the possibility of legal harm by others who might seek to damn respondent by false claims, as to statements alleged to be made by respondent."

Friends of Frank "Approached" Conley.

That was right,—if it was right for Frank not to see, in the jail, anybody except those he wished to see, why wasn't it equally right, at Police Headquarters, for Jim Conley? Conley says that neither he "nor his counsel have made request for the release of respondent or his transfer to any other place of confinement." Conley "is willing to remain indefinitely as a prisoner in solitary confinement, under any reasonable rules this Court (referring to His Honor, Judge Roan) may direct, subject to any further order or direction of this Court. Respondent admits that he is a material witness in behalf of the State of Georgia in this case, and admits that in the exercise of sound discretion, it is proper that respondent be held until the final trial of this, or any other case growing out of the unfortunate death of Miss Mary Phagan, but this respondent denies that, in the exercise of sound judicial discretion, it is necessary for this Court to order respondent held at any particular prison. Respondent denies that this Court has any legal right, in the exercise of sound judicial discretion, to order this respondent held as a witness in behalf of the State, when it is shown to this Court, as it is shown beyond the peradventure of a doubt, that there is no possibility for this respondent not to be present and subject to call as a witness in behalf of the State, since he is held in complete and perfect imprisonment, and there being no possible theory that the ends of justice will be thwarted, and all of these facts being without the slightest question, there is no reason for any order of

this Court committing respondent"; as they sought, Leo M. Frank's counsel, sought to have done, to the common jail of Fulton County, in the custody of the Sheriff. "Respondent is advised and believes that the counsel for the defendant (Frank) in this case has been, within the last few days, studying the law very thoroughly bearing on the question of the holding of this respondent as a material witness in behalf of the State, at any other place than the County prison, and also immediately finds a move on foot to have respondent returned to the County prison, and respondent is advised by his counsel that it is the belief of his counsel that the idea of transfer back to the County prison has under it plans laid by persons unfriendly to the interests of this respondent and friendly to the interests of the defendant (Frank) in this case. Respondent denies that the law vests in this court the right of committal as a witness in behalf of either side, under the facts and circumstances of this or any other case. Respondent shows that the conditions at the County jail are such that the interests of justice, as far as this respondent is concerned, can not be as well safeguarded and the interests of respondent and the interests of justice are greatly threatened by the return of this respondent to the County jail. He shows that, through no fault of the County Sheriff, a sufficient inside force of guards has not been provided by the County authorities, only one man being paid by the County to guard twenty cell blocks, distributed in twenty wings and over five floors; that it is a physical impossibility for this one man to keep up or even know what is transpiring on five different floors, or twenty separate immense wall and steel blocks, distributed through a large building; that with this inadequate force, which this respondent is advised the Sheriff of this County has complained about, it is an absolute impossibility for the best Sheriff in the world, or the best-trained deputies, to know exactly what is going on at any and all times, or any reasonable part of the time; that the keys to practically all of the cell blocks are carried by convicted criminals, known as

"trusties," who turn in and out parties entering or leaving cell blocks, and while they have general instructions covering their duties, it is an impossibility for the inside deputy to know whether each is discharging his duty properly at all times; that the food is prepared and distributed in the County prison itself and practically by convicted criminals, whose disregard for law and principle is written upon the criminal records of this State; that, owing to this condition, men have been known to saw through solid steel bars and cages and escape to freedom; that it would be easy for any one to reach or harm respondent or to poison him through his food; that the "trusty turnkeys," who are convicts, can easily swear as to admissions against the interest of this respondent, even though such admissions might not be made; that the friends of the defendant (Frank) in this case are allowed to pour constantly into the jail, at all hours of the day and up to a late hour of the night, and are in close touch with many of these "trusty turnkeys" and "trusty attachees" of the jail; that while a prisoner at the County prison, before his transfer to the City prison, a goodly number of people were admitted to the cell block to talk with respondent, whose presence was not requested or desired; that among those visitors was one whom this respondent has every reason to believe was working in the interest of the defendant (Frank)." And when he was down there, they admitted them to talk to him, and he didn't desire their presence, and even here in this Court, by newspaper men, for the short time that this man Conley was put in, they turn up and try to prove circumstances and admissions that Conley denies he ever made. "A goodly number of people," he says, for the short time that he was down there, "were admitted to the cell block and talked to respondent, whose presence was not requested nor desired; among those visitors was one whom this respondent has every reason to believe was working in the interest of the defendant (Frank); that this party presented respondent with sandwiches, which this respondent did not eat, that this same party also offered to present re-

spondent with whiskey; that respondent was threatened with physical harm while in the County prison to the extent of the possibility of taking his life; that he was denounced as a liar, relative to his testimony in this case; and this respondent (Jim Conley) is sure without the knowledge or through the neglect of the sheriff or any of his men, but directly attributable to the construction physically of the County prison and the inadequate force allowed the Sheriff to oversee and care for it. That respondent is advised and believes that one of the parties friendly to the defendant (Frank) is already priming himself to swear that respondent made certain admissions while he was in the County prison which this respondent did not make, and which testimony will be false, but will be given, if given, to help the defendant (Frank) and damage this respondent (Jim Conley). That this respondent was imprisoned, while in the County prison, directly over the cell block in which said defendant is detained, and was lodged among the most desperate criminals, one even being under sentence of death, and willing, no doubt, to swear or do anything necessary to help save or prolong his life; that these desperate criminals with whom this respondent was lodged, had this respondent completely at their mercy and could swear that he admitted things most damaging and which would be false and untrue and known by them to be false and untrue. This respondent is advised and believes that the Sheriff of this County has publicly proclaimed that the defendant looks him in the eye like an innocent man; that the Sheriff has given said defendant (Frank) an entire cell block and has isolated him completely except from his friends; that the Sheriff has expressed himself as not desiring "that nigger returned to the County prison," meaning respondent; that the Sheriff appears to feel that the requests made by respondent are meant as a reflection upon the Sheriff, but same was not so intended to be construed; nor was same so represented to the Court at the time of the transfer, nor was any such allegation made before the Court, at the time of the passage of the second

order transferring respondent back to the City prison, nor does respondent believe that same was in the mind of the Court, at the time of the passage of the order or influenced the Court; but that the inadequate force allowed the Sheriff and the construction of the jail rendered this request by respondent necessary, and same was made to this Court with no statement of facts, other than it was requested by respondent and in the judgment of the representative of the State there was necessity for same."

Removed From Jail to Station-house.

Judge Roan did it,—no reflection on the Sheriff, but with the friends of this man Frank pouring in there at all hours of the night, offering him sandwiches and whiskey and threatening his life, things that this Sheriff, who is as good as the Chief of Police but no better, couldn't guard against because of the physical structure of the jail, Jim Conley asked, and His Honor granted the request, that he be remanded back into the custody of the honorable men who manage the police department of the City of Atlanta.

Mr. Rosser: No, that's a mistake, that isn't correct, Your Honor discharged him from custody,—he said that under that petition Your Honor sent him back to the custody where you had him before, and that isn't true, Your Honor discharged him, vacated the order, that's what you did.

Mr. Dorsey: Here's an order committing him down there first—you are right about that, I'm glad you are right one time.

Mr. Rosser: That's more than you have ever been.

Mr. Dorsey: No matter what the outcome of the order may have been, the effect of the order passed by His Honor, Judge Roan, who presides in this case, was to remand him into the custody of the police of the City of Atlanta.

Mr. Rosser: I dispute that; that isn't the effect of the order passed by His Honor, the effect of the order

passed by His Honor was to turn him out, and they went through the farce of turning him out on the street and carrying him right back. That isn't the effect of Your Honor's judgment. In this sort of case, we ought to have the exact truth.

The Court: This is what I concede to be the effect of that ruling: I passed this order upon the motion of State's counsel, first, is my recollection, and by consent of Conley's attorney—

Mr. Rosser: I'm asking only for the effect of the last one.

The Court: On motion of State's counsel, consented to by Conley's attorney, I passed the first order, that's my recollection. Afterwards, it came up on motion of the Solicitor General, I vacated both orders, committing him to the jail and also the order, don't you understand, transferring him; that left it as though I had never made an order, that's the effect of it.

Mr. Rosser: Then the effect was that there was no order out at all?

The Court: No order putting him anywhere.

Mr. Rosser: Which had the effect of putting him out?

The Court: Yes, that's the effect, that there was no order at all.

Mr. Dorsey: First, there was an order committing him to the common jail of Fulton County; second, he was turned over to the custody of the police of the City of Atlanta, by an order of Judge L. S. Roan; third, he was released from anybody's custody, and except for the determination of the police force of the City of Atlanta, he would have been a liberated man, when he stepped into this Court to swear, or he would have been spirited out of the State of Georgia so his damaging evidence couldn't have been adduced against this man.

Conley's Character Sustains Story.

But yet you say he's impeached? You went thoroughly into this man Conley's previous life. You found out every

person for whom he had worked, and yet this lousy, disreputable negro is unimpeached by any man except somebody that's got a hand in the till of the National Pencil Company, unimpeached as to general bad character, except by the hirelings of the National Pencil Company. And yet you would have this jury, in order to turn this man loose, over-ride the facts of this case and say that Conley committed this murder, when all you have ever been able to dig up against him is disorderly conduct in the Police Court. Is Conley sustained? Abundantly. Our proof of general bad character, the existence of such character as can reasonably be supposed to cause one to commit an act like we charge, our proof of general bad character, I say, sustains Jim Conley. Our proof of general bad character as to lasciviousness not even denied by a single witness, sustains Jim Conley. Your failure to cross examine and develop the source of information of these girls put upon the stand by the State,—these "hair-brained fanatics," as Mr. Arnold called them, without rhyme or reason, sustains Jim Conley. Your failure to cross examine our character witnesses with reference to this man's character for lasciviousness sustains Jim Conley. His relations with Miss Rebecca Carson, the lady on the fourth floor, going into the ladies' dressing room even in broad daylight and during work hours, as first developed by Miss Jackson, your own witness, and as sustained by Miss Kitchens—

Mr. Rosser: Miss Jackson said nothing about that, she never mentioned Miss Carson at all.

Mr. Dorsey: That's right, you are right about that.

Scores of Facts Sustain Conley.

His relations with Miss Rebecca Carson, who is shown to have gone into the ladies' dressing room, even in broad daylight and during work hours, by witnesses whose names I can't call right now, sustains Jim Conley. Your own witness, Miss Jackson, who says that this libertine and rake came, when these girls were in there reclining and lounging

after they had finished their piece work, and tells of the sardonic grin that lit his countenance, sustains Jim Conley. Miss Kitchens, the lady from the fourth floor, that, in spite of the repeated assertion made by Mr. Arnold, you didn't produce, and her account of this man's conduct when he came in there on these girls, whom he should have protected and when he should have been the last man to go in that room, sustains Jim Conley; and Miss Jackson's assertion that she heard of three or four other instances and that complaint was made to the foreladies in charge, sustains Jim Conley. Darley and Mattie Smith, as to what they did even on the morning of Saturday, April 26th, even going into the minutest details, sustain Jim Conley. McCrary, the old negro that you praised so highly, the man that keeps his till filled by money paid by the National Pencil Company, as to where he put his stack of hay and the time of day he drew his pay, sustains Jim Conley. Monteen Stover, as to the easy-walking shoes she wore when she went up into this man's Frank's room, at the very minute he was back there in the metal department with this poor little unfortunate girl, sustains Jim Conley. Monteen Stover, when she tells you that she found nobody in that office, sustains Jim Conley, when he says that he heard little Mary Phagan go into the office, heard the footsteps of the two as they went to the rear, he heard the scream and he saw the dead body because Monteen says there was nobody in the office, and Jim says she went up immediately after Mary had gone to the rear. Lemmie Quinn,—your own dear Lemmie,—as to the time he went up and went down into the streets with the evidence of Mrs. Freeman and Hall, sustains Jim Conley. Frank's statement that he would consult his attorneys about Quinn's statement that he had visited him in his office sustains Jim Conley. Dalton, sustained as to his life for the last ten years, here in this community and in DeKalb, when he stated that he had seen Jim watching before on Saturdays and holidays, sustains Jim Conley. Daisy Hopkins' awful reputation and the statement of Jim, that he

had seen her go into that factory with Dalton, and down that scuttle hole to the place where that cot is shown to have been, sustains Jim Conley. The blood on the second floor, testified to by numerous witnesses, sustains Jim Conley. The appearance of the blood, the phyical condition of the floor when the blood was found Monday morning, sustains Jim Conley. The testimony of Holloway, which he gave in the affidavit before he appreciated the importance, coupled with the statement of Boots Rogers that that elevator box was unlocked, sustains Jim Conley. Ivey Jones, the man who says he met him in close proximity to the pencil factory on the day this murder was committed, the time he says he left that place, sustains Jim Conley. Albert McKnight, who testified as to the length of time that this man Frank remained at home, and the fact that he hurried back to the factory, sustains Jim Conley. The repudiated affidavit, made to the police, in the presence of Craven and Pickett, of Minola McKnight, the affidavit which George Gordon, the lawyer, with the knowledge that he could get a habeas corpus and take her within thirty minutes out of the custody of the police but which he sat there and allowed her to make, sustains Jim Conley. The use of that cord, found in abundance, to choke this girl to death, sustains Jim Conley. The existence of the notes alone sustains Jim Conley, because no negro ever in the history of the race, after having perpetrated rape or robbery, ever wrote a note to cover up the crime. The note paper on which it is written, paper found in abundance on the office floor and near the office of this man Frank, sustains Jim Conley. The diction of the notes, "this negro did this," and old Jim throughout his statement says "I done," sustains Jim Conley.

Mr. Rosser: I have looked the record up, and Jim Conley says "I did it," time and time again. He said "I disremember whether I did or didn't," he says "I did it"—

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Mr. Dorsey: They would have to prove that record before I would believe it.

Mr. Rosser: He says time and time again "I disremember whether I did or not"; he says "I did it," page after page, sometimes three times on a page. I've got the record, too. Of course, if the Almighty God was to say it you would deny it.

Mr. Dorsey: Who reported it?

Mr. Rosser: Pages 496, (Mr. Rosser here read a list of page numbers containing the statement referred to.)

Mr. Arnold: I want to read the first one before he caught himself, on page 946, I want to read the statement—

Mr. Dorsey: Who reported it, that's what I want to know.

Mr. Arnold: This is the official report and it's the correct report, taken down by the official stenographer, and he said, "Now when the lady comes I'll stamp like I did before," "I says all right, I'll do just as you say and I did."

Mr. Dorsey: He's quoting Frank here, "and he says now when the lady comes I'll stamp like I did."

Mr. Arnold: "I says all right, I'll do just as you say, and I did as he said." He has got it both ways, "I did it," and "I done it," you can find it both ways.

Mr. Dorsey: The jury heard that examination and the cross examination of Jim Conley, and every time it was put to him he says "I done it."

Mr. Rosser: And I assert that's not true, the stenographer took it down and he took it down correctly.

Mr. Dorsey: I'm not bound by his stenographer.

Mr. Rosser: I know, you are not bound by any rule of right in the universe.

The Court: If there's any dispute about the correctness of this report, I'll have the stenographer to come here.

Mr. Parry: I reported 1 to 31 myself, and I think I can make a statement that will satisfy Mr. Dorsey: The shorthand character for "did" is very different from "done," there's no reason for a reporter confusing those two. Now, at the bottom of this page,—I see I reported it myself, and that was what he said, quoting "All right, I'll do just as you say and I did as he said." Now, as I say, my characters for "did" and "done" are very different and shouldn't be confused,—no reason for their being confused.

The Court: Well, is that reported or not correctly?

Mr. Parry: That was taken as he said it and written out as he said it.

Mr. Dorsey: Let it go, then, I'll trust the jury on it.

Maybe he did, in certain instances, say that he did so and so, but you said in your argument that if there is anything in the world a negro will do, it is to pick up the language of the man for whom he works; and while I'll assert that there are some instances you can pick out in which he used that word, that there are other instances you might pick showing that he used that word "I done," and they know it. All right, leave the language, take the context.

Notes Sustain Jim Conley.

These notes say, as I suggested the other day, that she was assaulted as she went to make water. And the only closet known to Mary, and the only one that she would ever have used is the closet on the office floor, where Conley says he found the body, and her body was found right on the route that Frank would pursue from his office to that closet, right on back also to the metal room. The fact that this note states that a negro did it by himself, shows a conscious effort on the part of somebody to exclude and limit the crime to one man, and this fact sustains Conley. Frank even, in his statement sustains him, as to his time of arrival Saturday morning at the factory, as to the time of the visit to Montags, as to the folder which Conley says Frank had in

his hands, and Frank in his statement says that he had the folder. Conley is sustained by another thing: This man Harry White, according to your statement, got $2.00. Where is the paper, where is the entry on any book showing that Frank ever entered it up on that Saturday afternoon when he waited for Conley and his mind was occupied with the consideration of the problem as to what he should do with the body. Schiff waited until the next week and would have you believe there was some little slip that was put in a cash box showing that this $2.00 was given White, and that slip was destroyed. Listen to this: "Arthur White borrowed $2.00 from me in advance on his wages. When we spend, of course, we credit it; there was a time, when we paid out money we would write it down on the book and we found it was much better for us to keep a little voucher book and let each and every person sign for money they got."

"Let each and every person sign for money they got," says Frank in his statement, "and we have not only this record, but this record on the receipt book." And notwithstanding that you kept a book and you found it better to keep this little voucher book and let each and every person sign for money they got, notwithstanding the fact that you say that you kept a book for express and kerosene and every other conceivable purpose for which money was appropriated, you fail and refuse, because you can't, produce the signature of White, or the entry in any book made by Frank showing that this man White ever got that money, except the entry made by this man Schiff some time during the week thereafter.

Mind and Conscience on Crime.

I tell you, gentlemen of the jury, that the reason that Frank didn't enter up, or didn't take the receipt from White about the payment of that money, was because his mind and conscience were on the crime that he had committed. This expert in bookkeeping, this Cornell graduate, this man

who checks and re-checks the cash, you tell me that if things were normal that he would have given out to that man White this $2.00 and not have taken a receipt, or not have made an entry himself on some book, going to show it? I tell you there's only one reason why he didn't do it. He is sustained by the evidence in this case and the statement of Frank that he had relatives in Brooklyn. The time that Frank says that he left that factory sustains old Jim.

When old Jim Conley was on the stand, Mr. Rosser put him through a good deal of questioning with reference to some fellow by the name of Mincey. Where is Mincey? Echo answers "Where?" Either Mincey was a myth, or Mincey was such a diabolical perjurer that this man knew that it would nauseate the stomach of a decent jury to have him produced. Where is Mincey? And if you weren't going to produce Mincey, why did you parade it here before this jury? The absence of Mincey is a powerful fact that goes to sustain Jim Conley, because if Mincey could have contradicted Jim Conley, or could have successfully fastened an admission on old Jim that he was connected in any way with this crime, depend upon it, you would have produced him if you had to comb the State of Georgia with a fine-tooth comb, from Rabun Gap to Tybee Light.

His Own Acts Prove His Guilt.

Gentlemen, every act of that defendant proclaims him guilty. Gentlemen, every word of that defendant proclaims him responsible for the death of this little factory girl. Gentlemen, every circumstances in this case proves him guilty of this crime. Extraordinary? Yes, but nevertheless true, just as true as Mary Phagan is dead. She died a noble death, not a blot on her name. She died because she wouldn't yield her virtue to the demands of her superintendent. I have no purpose and have never had from the beginning in this case that you oughtn't to have, as an honest, upright citizen of this community. In the language of Daniel Web-

ster, I desire to remind you "that when a jury, through whimsical and unfounded scruples, suffers the guilty, to escape, they make themselves answerable for the augmented danger to the innocent."

Your Honor, I have done my duty. I have no apology to make. Your Honor, so far as the State is concerned, may now charge this jury,—this jury who have sworn that they were impartial and unbiased, this jury who, in this presence, have taken the oath that they would well and truly try the issue formed on this bill of indictment between the State of Georgia and Leo M. Frank, charged with the murder of Mary Phagan; and I predict, may it please Your Honor, that under the law that you give in charge and under the honest opinion of the jury of the evidence produced, there can be but one verdict, and that is: We the jury find the defendant, Leo M. Frank, guilty! GUILTY! **GUILTY!**

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